

any inappropriate burden on competition that is not necessary 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

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

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)¹⁰ of the Act and Rule 19b-4(f)(6)¹¹ thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.¹² 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-2002-31 and should be submitted by July 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46054; File No. SR-PCX-2002-12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Obligation of ETP Holders To Maintain Books and Records

June 10, 2002.

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 April 22, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE" or "Corporation"), submitted to 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. PCX filed Amendment No. 1 to the proposed rule change on May 17, 2002.³ The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,⁴ and Rule 10b-4(f)(6)

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange requests that the proposed rule change be considered pursuant to section 19(b)(3)(A)(i) of the Act and Rule 19b-4(f)(6) thereunder, and proposes to add a parenthetical phrase "including any interpretation relating thereto" to the first sentence of proposed PCX Rule 2.23. See letter from Mai S. Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 16, 2002 ("Amendment No. 1"). Because the Form 19b-4 submitted on April 22, 2002 was not complete, the proposed rule change was not considered filed. The proposed rule change became effective on May 17, 2002, the date on which Amendment No. 1 was filed with the Commission.

⁴ 15 U.S.C. 78s(b)(3)(A).

thereunder,⁵ 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

The PCX proposes a new rule, PCX Rule 2.23, in order to codify the existing obligations of an equity trading permit holder ("ETP Holder") to keep and preserve books and records. The text of the proposed rule change is below; new language is italicized.

Rule 2.23 Each ETP Holder must make, keep current and preserve such books and records as the Exchange may prescribe and as may be prescribed by the Securities Exchange Act of 1934 and the rules and regulations thereunder (including any interpretation relating thereto) as though such ETP Holders were brokers or dealers registered with the SEC pursuant to Section 15 of the Exchange Act. No ETP Holder may refuse to make available to the Exchange such books, records or other information as may be called for under the Rules or as may be requested in connection with an Exchange investigation.

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 PCX 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 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

Currently, Exchange rules obligate ETP Holders to make, keep current, and preserve certain books and records.⁶ In addition, the Exchange relies on the Commission's comprehensive books and records rules, Rule 17a-3⁷ and Rule

⁵ 17 CFR 240.19b-4(f)(6).

⁶ See, e.g., PCX Rule 4.1, Commentary .02(g) (requirement that an ETP Firm maintain records on spot commodities); PCX Rule 4.14(a) (requirement that ETP Holders maintain daily margin records).

⁷ 17 CFR 240.17a-3.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² As required under Rule 19b-4(f)(6)(iii), 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.

17a-4⁸ of the Act, as the basis of its authority to require ETP Holders to maintain and retain books and records not covered under the Exchange's express rules.

The Exchange now proposes to adopt a new rule to codify the books and records requirement and to make clear to ETP Holders that the Commission's comprehensive books and records rule applies to each ETP Holder. As proposed, the new rule would require each ETP Holder to make, keep current, and preserve such books and records as the Exchange may prescribe and as those that may be prescribed by the Act and the rules and regulations thereunder (including any interpretation thereunder). The proposed rule further provides that no ETP Holder may refuse to make available to the Exchange such books, records or other information as may be called for under the PCX rules or as may be requested in connection with an Exchange investigation. Otherwise, the proposed rule does not impose any additional requirements on the ETP Holders.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5),¹⁰ in particular, because 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.

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

The PCX 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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30

days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange has 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,¹¹ the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

At any time within 60 days of the filing of such 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.¹⁴

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 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 Number SR-PCX-2002-12 and should be submitted by July 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Jill M. Peterson,

Assistant Secretary.

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¹¹ The Commission notes that PCX's original Form 19b-4, dated April 22, 2002, satisfied the pre-filing notice requirement.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ The proposed rule change became effective on May 17, 2002, the date on which Amendment No. 1 was filed and, therefore, the 60 day abrogation period began on May 17, 2002.

¹⁵ 17 CFR 200.30(a)(12).

SMALL BUSINESS ADMINISTRATION

Region VIII Regulatory Fairness Board; Public Federal Regulatory Enforcement Fairness Roundtable

The Small Business Administration Region VIII Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Roundtable on Tuesday, June 25, 2002 at 8:30 a.m. at the Orthopedic Institute, 810 East 23rd Street, Sioux Falls, South Dakota, to provide small business owners and representatives of trade associations with an opportunity to share information concerning the federal regulatory enforcement and compliance environment.

Anyone wishing to attend or to make a presentation must contact Janice M. Camp in writing or by fax, in order to be put on the agenda. Janice M. Camp, U.S. Small Business Administration, South Dakota District Office, 110 South Phillips Avenue, Suite 200, Sioux Falls, SD 57104, phone (605) 330-4243, ext. 30, fax (605) 330-4215, e-mail: janice.camp@sba.gov. If unable to reach Janice M. Camp, please contact Michele Arends at (605) 330-4243, ext. 11 or at (605) 367-4891, e-mail: michele.arends@sba.gov.

For more information, see our Web site at www.sba.gov/ombudsman.

Dated: June 3, 2002.

Michael L. Barrera,
National Ombudsman.

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SMALL BUSINESS ADMINISTRATION

Region V Regulatory Fairness Board; Public Federal Regulatory Enforcement Fairness Roundtable

The Small Business Administration Region V Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Roundtable on Monday, July 15, 2002 at 10 a.m. at the McHenry County College, Room B-116, 8900 US Highway 14, Crystal Lake, IL 60012, to provide small business owners and representatives of trade associations with an opportunity to share information concerning the federal regulatory enforcement and compliance environment.

Anyone wishing to attend or to make a presentation must contact Gary Peele in writing or by fax, in order to be put on the agenda. Gary Peele, U.S. Small Business Administration, Illinois District Office, 500 West Madison Street, Chicago, IL 60661, phone (312)

⁸ 17 CFR 240.17a-4.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).