Mr. Harvey L. Pitt, Chairman, Commission, dated September 13, 2002 (''SIO NYSE Letter'').

58. E-mail from Tore U. Johnsson, to *rule-comments@sec.gov* dated August 23, 2002 (''Johnsson E-mail'').

59. E-mail from *Mark@mvcinternational.com* dated September 4, 2003 (''MVC Associates NYSE E-mail'').

60. Letter from Sullivan & Cromwell, to Mr. Jonathan G. Katz, Secretary, Commission, dated September 23, 2003 (''Sullivan & Cromwell NYSE Letter'').

61. Letter form Henry A. McKinnell, Chairman of the Board and Chief Executive Officer, Pfizer Inc., to Mr. Richard Grasso, Chairman, NYSE, dated May 30, 2003 (''Pfizer NYSE Letter'').

62. Letter from Barbara J. Krumsiek, President and CEO, Calvert Group, Ltd., to Mr. Richard A. Grasso, Chairman and Chief Executive Officer, NYSE, dated May 20, 2003 (''Calvert Letter'').

63. Letter from Bob Reed, JP Financial, to Janice (''Bob Reed Letter'').

Comment Letters Relating to SR–NASD–2002–141, the Nasdaq Independent Director Proposal

1. Letter from D. Scott Huggins, Senior Vice President and Chief Auditor, Fulton Financial Corporation, to Jonathan G. Katz, Secretary, Commission, dated April 1, 2003 (''Fulton Nasdaq Letter'').

2. Letter from Joseph S. Schwertz Jr., Corporate Secretary, Whitney Holding Company, to Jonathan G. Katz, Secretary, Commission, dated April 14, 2003 (''Whitney Nasdaq Letter'').

3. Letter from Janne G. Gallagher, Acting General Counsel, Council on Foundations, to Jonathan G. Katz, Secretary, Commission, dated April 15, 2003 (''Council on Foundations Nasdaq Letter'').

4. Letter from Cary Klafter, Vice President, Legal and Government Affairs, Intel Corporation, to Margaret H. McFarland, Deputy Secretary, Commission, dated April 11, 2003 (''Intel Nasdaq Letter'').

5. Letter from Susan D. Stanley, First Vice President and Corporate Secretary, People's Bank, to Jonathan G. Katz, Secretary, Commission, dated April 15, 2003 (''People's Bank Nasdaq Letter'').

6. Letter from Charlotte M. Bahin, Director of Regulatory Affairs, Senior Regulatory Counsel, America's Community Bankers, to Jonathan G. Katz. Secretary, Commission, dated April 22, 2003 (''America's Community Bankers Nasdaq Letter'').

7. Letter from Sarah A. Miller, Director, Center for Securities, Trust and Investments, American Bankers Association, to Jonathan G. Katz, Secretary, Commission, dated April 16, 2003 (''American Bankers Association Nasdaq Letter'').

8. Letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission, dated April 15, 2003 (''Investment Company Institute Nasdaq Letter'').

9. Letter from David A. Kastelic, Senior Vice President and General Counsel, Cenex Harvest States Cooperatives, to Jonathan G. Katz, Secretary, Commission, dated April 21, 2003 (''Cenex Harvest Nasdaq Letter'').

10. Letter from Charles M. Nathan, Committee on Securities Regulation of the Association of the Bar of the City of New York, to Secretary, Commission, dated April 25, 2003 (''Committee on Securities Regulation Nasdaq Letter'').

11. Letter from C.R. Cloutier, Chairman, Independent Community Bankers of America, to Jonathan G. Katz, Secretary, Commission, dated May 6, 2003 (''Independent Community Bankers Nasdaq Letter'').

12. Letter from Douglas A. Cifu, Paul, Weiss, Rifiand, Wharton & Garrison LLP, to Jonathan G. Katz, Secretary, Commission, dated May 14, 2003 (''Paul Weiss Nasdaq Letter'').

13. Letter from Mark G. Heesen, President, National Venture Capital Association, to Jonathan G. Katz, Secretary, Commission, dated April 16, 2003 (''National Venture Nasdaq Letter'').

14. Letter from Fritz Heimann, Chairman, and Thomas L. Milan, Director, Transparency International-USA, to Mr. Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated May 28, 2003 (''TI–USA Nasdaq Letter'').

15. Letter from Bonnie K. Wachtel, CEO, Wachtel & Co., Inc., to Jonathan G. Katz, Secretary, Commission, dated June 16, 2003 (''Wachtel Nasdaq Letter'').

16. Letter from Irwin M. Jacobs, Chairman and CEO, QUALCOMM, to Secretary, Commission, dated August 22, 2002 (''Qualcomm Nasdaq Letter'').

17. E-mail from Tore U. Johnsson, to *rule-comments@sec.gov* dated August 23, 2002 (''Johnsson Nasdaq E-mail'').

18. E-mail from George Kolber to *rules-comments@sec.gov,* dated July 1, 2003 (''Kolber Nasdaq E-mail'').

19. Letter from Gary P. Kreider, Keating, Muething & Klekamp, PLL, to Secretary, Commission, dated July 1, 2003 (''Kreider Nasdaq Letter'').

Comment Letters Relating to Both SR–NYSE–2002–33 and SR–NASD–2002–141

1. Letter from Stanley Keller, Chair, Committee on Federal Regulation of Securities, Robert Todd Lang, Chair, Task Force on Listing Standards, Committee on Federal Regulation of Securities, American Bar Association, Business Law Section, to Commission, dated June 2, 2003 (''Committee on Federal Regulation of Securities Letter'').

2. E-mail from Peter Herman dated June 3, 2003 (''Herman E-mail'').

3. E-mail from Harlan*Hobgood@cs.com* to *rule-comments@sec.gov,* dated June 12, 2003 (''Hobgood E-mail'').

4. Letter from Mark R. Beatty, General Counsel, Cascade Investment, to The Honorable Jonathan G. Katz, Secretary, Commission, dated July 3, 2003 (''Cascade Investment Letter'').

5. Letter from Peter S. Brown, Senior Vice President and General Counsel, Arrow Electronics, Inc., to Ms. Janice O'Neill, Vice President of Corporate Compliance, NYSE, dated August 28, 2003 (''Arrow Electronics Letter'').

Comment Letters Relating to SR–NASD–2002–139, the Nasdaq Code of Conduct Proposal

1. Letter from Dorothy M. Donohue, Associate Counsel, Investment Company Institute, to Mr. Jonathan G. Katz, Secretary, Commission, dated July 30, 2003 (''ICI 2002–139 Letter'').

2. Letter from Charlotte M. Bahin, Senior Vice President, Regulatory Affairs, America's Community Bankers, to Jonathan G. Katz, Secretary, Commission, dated July 31, 2003 (''ACB 2002–139 Letter'').

Comment Letters Relating to SR–NASD–2002–138, the Nasdaq Issuer Applicability Proposal

1. Letter from Sullivan & Cromwell LLP, to Mr. Jonathan G. Katz, Secretary, Commission, dated July 31, 2003 (''S&C 2002–138 Letter'').

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48746; File No. SR–PCX–2003–32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Exchange's Rules Under the Minor Rule Plan

November 4, 2003.

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 July 8, 2003, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The PCX is proposing to adopt new PCX Rules 10.13(h)(40)–(44) and 10.13(k)(i)(40)–(44) in order to incorporate five existing PCX rules into the Minor Rule Plan (''MRP'') and Recommended Fine Schedule (''RFS''). The five PCX Rules include: (1) Failure to honor priority of bids and offers pursuant to PCX Rules 6.75 and 6.76; (2) failure to quote markets within the maximum quote spread differentials or failure to disseminate quotations accurately pursuant to PCX Rules

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

[2] 17 CFR 240.19b–4.

6.37(b)(1) and 6.82(c)(1); (3) trading either before the opening or after closing of market pursuant to PCX Rule 4.2; (4) entering two-sided quotations in options issues that are not included in a Remote Market Maker's (''RMM'') primary appointment pursuant to PCX Rule 6.37(h)(5); and (5) failure to maintain an accurate record of orders pursuant to PCX Rule 6.68. The Exchange is also proposing three minor amendments to the MRP and RFS. The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in brackets.

* * * * *

Minor Rule Plan

Rule 10.13(a)–(g)—No change.

(h) Minor Rule Plan: Options Floor Decorum and Minor Trading Rule Violations

(1)–(24)—No change.

(25) Failure to meet 75% Primary Appointment [Zone] Requirement. (*Rules 6.35, Com. .03 and 6.37(h)(5))*

(26)–(32)—No change.

(33) Dividing up an order to make its parts eligible for entry into Auto-Ex *or PCX Plus.* (*Rules 6.87*(*2*)[(c)] *and 6.90(e)(1))*.

(34)–(39)—No change.

(40) Member failed to honor the priority of bids and offers. (Rules 6.75 and 6.76)

(41) Market Maker failed to quote markets within the maximum quote spread differentials or failed to disseminate quotes accurately. (Rules 6.37(b)(1) and 6.82(c)(1))

(42) Member traded either before the opening or after the close of market. (Rule 4.2)

(43) Remote Market Maker entered two-sided quotations in options issues that are not included in their primary appointments. (Rule 6.37(h)(5))

(44) Member failed to maintain an accurate record of orders. (Rule 6.68)

(i)—No change.

(j)—No change.

(k) Minor Rule Plan: Recommended Fine Schedule

(i) Options Floor Decorum and Minor Trading Rule Violation

1.–24.—No change.

1. Failure to meet 75% Primary Appointment [Zone] Requirement. (*Rules 6.35, Com. .03 and 6.37(h)(5))*

26–32.—No change.

33. Dividing up an order to make its parts eligible for entry into Auto-Ex *or PCX Plus.* (*Rules 6.87(d)(2)*[(c)] *and 6.90(e)(1)*)

34.–38.—No change.

1. *Failure to meet 60% Quoting Requirement. (Rule 6.37(g)(2))*

1st Violation, $500.

2nd Violation, $1,000.

3rd Violation, $2,500.

2. *Member failed to honor the priority of bids and offers. (Rules 6.75 and 6.76)*

1st Violation, $500.

2nd Violation, $1,000.

3rd Violation, $2,000.

3. *Market Maker failed to quote markets within the maximum quote spread differentials or failed to disseminate quotes accurately. (Rules 6.37(b)(1) and 6.82(c)(1))*

1st Violation, $500.

2nd Violation, $1,000.

3rd Violation, $2,000.

4. *Member traded either before the opening of Market or after the close of market. (Rule 4.2)*

1st Violation, $1,000.

2nd Violation, $2,500.

3rd Violation. $3,500.

43. *Remote Market Maker entered two-sided quotations in options issues that are not included in their primary appointments. (Rule 6.37(h)(5))*

1st Violation, $500.

2nd Violation, $1,000.

3rd Violation, $2,500.

44. *Member failed to maintain accurate record of orders. (Rule 6.68)*

1st Violation, $500.

2nd Violation, $1,000.

3rd Violation, $2,500.

* * * * *

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 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

I. Purpose

The Exchange proposes to adopt new PCX Rules 10.13(h)(40)–(44) and 10.13(k)(i)(40)–(44) in order to incorporate existing PCX Rules 6.75 and 6.76, 6.37(b)(1) and 6.82(c)(1), 4.2, 6.37(h)(5), and 6.68 into the MRP and RFS.

First, the Exchange proposes to adopt new PCX Rules 10.13(h)(40) and 10.13(k)(i)(40) into the MRP and RFS for failure to honor the priority of bids and offers pursuant to PCX Rules 6.75 and 6.76.[3] PCX Rule 6.75 states that the highest bid/offer shall have priority, but where two or more bids/offers for the same option contract represent the highest price and one bid/offer is displayed by the Order Book Official, such bid/offer shall have priority over any other bid/offer at the post. Similarly, under PCX Rule 6.76, multiple bids or offers are afforded priority based on account types and other principles. The proposed fines are $500 for a first violation, $1,000 for a second, and $2,000 for a third.

Second, the Exchange proposes to adopt new PCX Rules 10.13(h)(41) and 10.13(k)(i)(41) into the MRP and RFS for failure to quote markets within the maximum quote spread differentials pursuant to PCX Rule 6.37(b)(1) or failure to disseminate quotations accurately pursuant to 6.82(c)(1). PCX Rule 6.37(b)(1) states that a Market Maker is expected to bid/offer so as to create differences of no more than: .25 between the bid and the offer for each option contract for which the bid is less than $2, no more than .40 where the bid is $2 or more but does not exceed $5, no more than .50 where the bid is more than $5 but does not exceed $10, no more than .80 where the bid is more than $10 but does not exceed $20, and, no more than $1 when the last bid is $20.10 or more, provided that the Options Floor Trading Committee may establish differences other than the above for one or more series or classes of options. PCX Rule 6.82(c)(1) states that Lead Market Makers are required to disseminate market quotations accurately. A member who fails to quote markets within the maximum quote spread differentials or fails to disseminate market quotations accurately will be subject to disciplinary action pursuant to PCX Rule 10.13(h)(41). The proposed fines are $500 for a first violation, $1,000 for a second, and $2,000 for a third.

Third, the Exchange proposes to adopt new PCX Rules 10.13(h)(42) and 10.13(k)(i)(42) for trading either before the opening or after the close of market pursuant to PCX Rule 4.2. PCX Rule 4.2 states that trading shall be limited to the hours during which the Exchange is open for the transaction of business. No member shall make any bid, offer or transaction upon the Floor before the official opening of the Exchange or after the closing of the market. Under the proposed rule, a member that trades either before the opening or after the close of market will be subject to disciplinary action pursuant to PCX

[3] PCX Rule 6.76 is the priority rule applicable to PCX Plus.

Rule 10.13(h)(42). The proposed fines are $1,000 for a first violation, $2,500 for a second, and $3,500 for a third.

Fourth, the Exchange proposes to adopt new PCX Rules 10.13(h)(43) and 10.13(k)(i)(43) into the MRP and RFS for violation of the two-sided quotation restriction for RMMs. PCX Rule 6.37(h)(5) restricts RMMs from entering two-sided quotations in options issues that are not included in their primary appointments. RMMs are, however, permitted to enter single-sided quotes and multiple orders to buy and sell the same option issues. Under the proposed rule, a RMM that enters a two-sided quotation in options issues outside of their primary appointments will be subject to disciplinary action pursuant to PCX Rule 10.13(h)(43). The proposed fines are $500 for a first violation, $1,000 for a second, and $2,500 for a third.

Fifth, the Exchange proposes to adopt new PCX Rules 10.13(h)(44) and 10.13(k)(i)(44) for failure to maintain an accurate record of orders. PCX Rule 6.68 requires members to maintain and preserve a written record of every order for a period of time specified by the Commission. The proposed fines are $500 for a first violation, $1,000 for a second, and $2,500 for a third.

The Exchange also proposes to amend PCX Rule 10.13(k)(i)(39) to include a fine schedule for RMMs' failure to meet the 60% quoting requirement. The proposed fine schedule for PCX Rule 10.13(h)(39) was inadvertently omitted in a previous rule filing,[4] and it is consistent with the fines established for violations by a Market Maker involving the 75% primary appointment requirement and the 60% in-person trading requirement.[5] In addition, the Exchange proposes to amend the text of current PCX Rules 10.13(h)(25) and 10.13(k)(i)(25) to include references to PCX Rule 6.37(h)(5) for purposes of clarifying the application of the fine schedule for violations by RMMs involving the 75% primary appointment requirement.

Finally, the Exchange proposes two amendments to PCX Rules 10.13(h)(33) and 10.13(k)(i)(33) of the MRP and RFS. First, the corresponding rule number will be changed to reflect the correct rule number, which is ''Rule 6.87(d)(2)''. Second, the equivalent rule violation in PCX Plus, ''Rule 6.90(e)(1)'', will be added to this MRP and RFS.

The Exchange believes that the proposed rule changes will serve to significantly strengthen the ability of the Exchange to carry out its oversight responsibilities as a self-regulatory organization (''SRO''). The rules should also aid the Exchange in carrying out its surveillance and enforcement functions. Under the proposed rules, the Enforcement Department would continue to exercise its discretion under PCX Rule 10.13(f) and take cases out of the MRP to pursue them as formal disciplinary matters if the facts or circumstances warrant such action.[6]

In addition, two of the proposed rule adoptions (*i.e.*, Proposed PCX Rules 10.13(h)(40)–(41) and 10.13(k)(i)(40)–(41)) correspond to those found in the Chicago Board Options Exchange (''CBOE'') and the American Stock Exchange (''Amex'') MRP, respectively.[7] Thus, the Exchange is proposing to include such rules into the MRP to conform to those found in other SROs' MRPs.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] in particular, in that it will promote just and equitable principles of trade; facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system; and protect investors and the public interest. The Exchange believes that the proposal is also consistent with Section 6(b)(6) of the Act,[10] which requires that members and persons associated with members be appropriately disciplined for violations of Exchange rules.

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

The Exchange 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 Exchange consents, the Commission will:

A. By order approve such proposed 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. 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–2003–32 and should be submitted by December 3, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

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[4] *See* Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (Order approving PCX Plus).

[5] *See* PCX Rules 10.13(k)(i)(25) and 10.13(k)(i)(26).

[6] The Commission notes that certain of the rules that PCX proposes to add to its MRP relate to market making obligations, and further notes that it previously has indicated that ''only the most technical and non-substantive violations'' of a market maker's obligations should be handled pursuant to a minor rule plan. Securities Exchange Act Release No. 27878 (April 14, 1990), 55 FR 13345, [SR–NYSE–89–44].

[7] *See e.g.*, CBOE Rule 17.50(g)(5) and Amex Rule 590G.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(6).

[11] 17 CFR 200.30–3(a)(12).