

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51389; File No. SR-PCX-2005-17]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Amendments to the Bylaws of PCX Holdings, Inc.

March 17, 2005.

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> notice is hereby given that on March 9, 2005, the Pacific Exchange, Inc. (“PCX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a “non-controversial” rule change under subparagraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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

PCX is submitting on behalf of PCX Holdings, Inc. (“PCXH”) a proposed rule change to reflect an amendment to the Bylaws of PCXH to adopt new Section 7.07. This Bylaw provision states that PCXH would take such action as is necessary to insure that its officers, directors, and employees consent to the applicability of Sections 7.03 and 7.04 of the PCXH Bylaws with respect to Exchange-related activities. The text of the proposed rule change is below. Proposed new language is in *italics*.

\* \* \* \* \*

PCX HOLDINGS, INC.

BYLAWS

ARTICLE 7

MISCELLANEOUS

Section 7.01–7.06—No Change.

*Section 7.07—The Corporation shall take such action as is necessary to ensure that the Corporation’s officers, directors and employees consent to the applicability of Section 7.03 and 7.04*

*with respect to Exchange-related activities.*

\* \* \* \* \*

#### 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 Exchange 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 self-regulatory organization 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

On May 17, 2004, the Commission approved the PCX’s plan of demutualization.<sup>4</sup> As a condition for Commission approval of the plan of demutualization, Exchange staff represented to the Commission<sup>5</sup> that it would present to the Board of Directors of PCXH for its approval a proposed new PCXH Bylaw provision stating that PCXH would take such action as is necessary to insure that its officers, directors, and employees consent to the applicability of sections 7.03 and 7.04 of the PCXH Bylaws with respect to Exchange-related activities. The purpose of proposed Section 7.07 to the PCXH Bylaws is to allow the Exchange to satisfy the representation it made to the Commission as part of the demutualization order.

The Directors of PCXH approved this amendment to the PCXH Bylaws on June 24, 2004. Pursuant to Section 7.06 of the PCXH Bylaws, the proposed amendment was submitted to the PCX Board of Directors. The PCX Board of Directors determined at its September 11, 2004 meeting that this amendment should be submitted to the Commission.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5)

<sup>4</sup> See Securities Exchange Act Release No. 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (approving File No. SR-PCX-2004-08).

<sup>5</sup> See Footnote 27 of Securities Exchange Act Release No. 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (approving File No. SR-PCX-2004-08).

<sup>6</sup> 15 U.S.C. 78f(b).

of the Act,<sup>7</sup> in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade and to protect investors and the public interest.

##### 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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>8</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder,<sup>9</sup> because the Exchange has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The PCX provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing the proposed rule change. At any time within 60 days of the filing of such 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 purpose 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. Comments may be submitted by any of the following methods:

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

*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](mailto:rule-comments@sec.gov). Please include File Number SR-PCX-2005-17 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-2005-17. 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 Section. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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-2005-17 and should be submitted on or before April 15, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51401; File No. SR-PCX-2005-26]

**Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Remote Market Makers' Ability To Be Reappointed Options Issues**

March 21, 2005.

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> notice is hereby given that on March 4, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by PCX. The Exchange filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(3) thereunder<sup>4</sup> as being concerned solely with the administration of the Exchange, which renders the proposal effective upon the filing with the Commission. 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**

PCX is proposing to amend PCX Rules 6.35(g)(4) to eliminate the requirement that a Remote Market Maker ("RMM") wait one full calendar quarter prior to being reappointed in an option issue that such RMM previously relinquished. Below is the text of the proposed rule change. Proposed deletions are in brackets.

\* \* \* \* \*

**Rule 6.35 Appointment of Market Makers**

(a)-(f) No Change.  
 (g) Remote Market Makers.  
 (1)-(3) No Change.  
 (4) Remote Market Makers may withdraw from trading an option issue that is within their primary appointment by providing the Exchange with a three-business-day written notice of such withdrawal. Remote Market Makers who fail to give advance written notice of withdrawal to the Exchange may be subject to formal disciplinary action pursuant to Rule 10. [Subsequent

to withdrawal, the Remote Market Maker may not be re-appointed as a Remote Market Maker in that option issue for a period of one full calendar quarter.]

(5)-(6) No Change.

(h)-(i) No Change.

\* \* \* \* \*

**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 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*

**1. Purpose**

PCX Rule 6.35(g)(4) currently specifies that an RMM must wait one full calendar quarter prior to being reappointed in an option issue that was previously relinquished by such RMM. According to the Exchange, when PCX Rule 6.35(g)(4) was originally approved, the one calendar quarter prohibition was necessary to facilitate an effective rollout of PCX's new electronic trading platform, PCX Plus. In addition, the restriction was designed to mitigate the anticipated administrative burden related to frequent requests for the addition and removal of issues included in an RMM's primary appointment.

Since the introduction of PCX Plus, the original reasons for the one calendar quarter restriction no longer exist. PCX Plus has been fully implemented and is operating effectively. The need to prohibit RMMs from adding and removing issues on a regular basis to maintain system integrity is no longer necessary. Further, based on actual results, the Exchange has learned that RMMs do not switch issues on a frequent basis, as originally anticipated. As such, the Exchange overestimated the administrative burden related to adding and/or removing issues from an RMM's primary appointment. Based on actual results, the Exchange staff is capable of handling the administrative workload that would result from the removal of the current restriction.

Finally, the elimination of the one calendar quarter prohibition would

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(3).

<sup>10</sup> 17 CFR 200.30-3(a)(12).