

the extent such concerns had merit, the Commission believes the Amex's development of Auto-Ex functionality for Nasdaq securities should help address the concerns raised by other market participants.

For the reasons discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-Amex-2003-16) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47734; File No. SR-PCX-2003-13]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to its Arbitration Program

April 24, 2003.

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 April 11, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with 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. The Commission has received two comment letters regarding the proposed rule change.<sup>3</sup> On April 17, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit

comments on the proposed rule change from interested persons. For the reasons described below, the Commission is granting accelerated approval to the proposed rule change.

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

PCX is proposing to amend its arbitration rules by amending Commentary .02 to PCX Rule 12.1 and adding new PCX Rule 12.35(b). PCX Rule 12.35(b) would require that pending arbitrations filed prior to the date the SEC approves the proposed rule changes set forth herein (the "Approval Date") be administered in accordance with PCX Rules 12.1 through 12.34 if an arbitrator has been appointed prior to the Approval Date and all parties to the arbitration have waived application of the California Rules of Court, Division VI of the Appendix, entitled "Ethics Standards of Neutral Arbitrations in Contractual Arbitration" (the "California Standards"), and waived any claims against the PCX that the conduct of the arbitration violates the California Code of Civil Procedure Section 1281.92 ("CCCP Claims").<sup>5</sup> Both waivers must be made without condition and in the form required by PCX. A copy of the proposed waiver form for the CCCP Claims was filed with the Commission as Exhibit A to the proposed rule change. The waiver for the California Standards must be made pursuant to the rules previously approved by the Commission.<sup>6</sup> Additionally, this rule change will require industry parties in arbitration to waive the CCCP Claims upon the execution of a waiver by a customer or, in industry cases, upon the execution of a waiver by an associated person with claims of statutory discrimination.

Below is the text of the proposed rule change. Proposed new language is *italicized*, deleted text is in [brackets].

\* \* \* \* \*

### PCX RULE 12

#### Arbitration

#### Matters Subject to Arbitration

Rule 12.1(a)-(g)—No change. Commentary:

.01 No change.

.02 It may be deemed conduct inconsistent with just and equitable principles of trade for a member, a member organization or a person

associated with a member or member organization to:

(a) fail to submit to arbitration on demand under the provisions of this Rule[.];

(b) fail to waive the California Rules of Court, Division VI of the Appendix, entitled "Ethics Standards for Neutral Arbitrators in Contractual Arbitration" (the "California Standards"), if all the parties in the case who are customers have waived application of the California Standards in that case; or to fail to waive the California Standards if all associated persons with a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute have waived application of the California Standards in that case;

(c) fail to waive any claims against the Exchange that the conduct of the arbitration violates the California Code of Civil Procedure Section 1281.92 ("CCCP Claims"), if all the parties in the case who are customers have waived the CCCP Claims in that case; or to fail to waive the CCCP Claims if all associated persons with a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute have waived the CCCP Claims in that case;[or]

(d) to fail to appear or to provide any document in his or its possession or control as directed pursuant to the provisions of this Rule; or

(e) to fail to honor an award of arbitrators properly rendered pursuant to the provisions of this Rule where a timely motion has not been made to vacate or modify such award pursuant to applicable law.

.03 No change.

\* \* \* \* \*

### Rule 12.35 Applicability of Arbitration Rules

(a) *Reserved.*

(b) Arbitrations Filed Prior to [insert Approval Date]. Arbitration claims that were filed prior to [insert Approval Date] and remain pending will be administered as follows:

(i) The arbitration claim will be administered in accordance with Rules 12.1 through 12.34 if:

(A) arbitrator(s) have been appointed as of [insert Approval Date]; and

(B) all parties to the arbitration have waived, without condition and in the form required by the Exchange, the application of the California Standards and the CCCP Claims (as defined in Commentary .02 of Rule 12.1).]

\* \* \* \* \*

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> *Id.*

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

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

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

<sup>3</sup> See e-mails dated April 14 and 18, 2003 from Tim Canning, Esq.

<sup>4</sup> See letter dated April 17, 2003 from Kathryn Beck, Senior Vice President, PCX, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission.

<sup>5</sup> The Exchange has filed a separate proposal (SR-PCX-2002-77) to address the administration of all other arbitrations.

<sup>6</sup> See Securities Exchange Act Release No. 46881 (Nov. 21, 2002), 67 FR 71224 (November 29, 2002).