

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.⁷ The text of these statements may be examined at the places specified in Item III below. 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

PCX states that it makes every effort to serve investors who bring their claims to PCX by providing a fair, efficient, and economical arbitration forum. Recent changes in California law and the attendant litigation, however, have caused PCX to reevaluate the continuance of its arbitration program. Specifically, California recently adopted (1) Section 1281.92 of the California Code of Civil Procedure ("CCCP 1281.92"), which prohibits private arbitration providers from administering arbitrations, or providing any other services related to arbitration, if any party or attorney for a party has, or has had within the preceding year, any type of financial interest in the arbitration provider, and (2) the California Standards, which require arbitration providers to implement and maintain substantial new recordkeeping and disclosure requirements. CCCP 1281.92 became effective on January 1, 2003. Since their adoption, CCCP 1281.92 and the California Standards have become the subject of controversy or, in some cases, litigation regarding their interpretation and application to arbitration programs administered by self-regulatory organizations.⁸ To

minimize any potential financial and litigation risk associated with these new provisions, PCX has decided to implement certain changes to its arbitration rules. In this regard, PCX has developed a plan for the future handling of pending arbitration claims as well as any new arbitration claims raised under PCX rules.

As one part of this plan, the PCX intends to expeditiously proceed with the administration of pending arbitrations in which arbitrators have been appointed as of the Approval Date. Because PCX has a strong desire to accommodate the parties to these arbitrations, these matters will be permitted to continue under the existing PCX arbitration rules. However, given the uncertain legal environment in California, PCX would require the parties to these arbitrations to waive the California Standards and CCCP Claims in order for the arbitrations to continue pursuant to PCX Rules 12.1–12.34.⁹

Once this proposed rule filing is effective, PCX will notify parties to this subset of pending arbitrations of the rule change and provide them with the option of waiving the California Standards and the CCCP Claims. PCX will provide them with the waiver forms and the opportunity to speak with PCX staff if they desire more information regarding this option.

At the same time, PCX will notify industry parties in this same subset of cases that they must waive the California Standards and the CCCP Claims if the investor, or the associated person with a claim of statutory employment discrimination, agrees to a waiver. Industry parties in such cases will be required to execute waiver agreements. An industry party's failure to sign the waiver as required by the proposed rule change will be referred for disciplinary action.

2. Statutory Basis

PCX believes that this proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5),¹¹ which requires that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing

information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest.

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

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. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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–2003–13 and should be submitted by May 22, 2003.

IV. Summary of Comments

As noted above, this proposal is one of two filed by PCX relating to the administration of its arbitration program. The Commission received two letters from one commenter addressing the proposals.¹² The commenter, an attorney representing clients with pending arbitration claims at the Exchange, opposed accelerated approval of the proposals, and requested that they be subject to a full comment period. The commenter further expressed the concern that if any party to an arbitration proceeding did not execute the waivers required by PCX, the matter

⁷ The discussion in this section represents the Exchange's views on the situation in California and does not in any way represent a Commission position on this issue.

⁸ See, e.g., Brief of the Securities and Exchange Commission, Amicus Curiae, in Support of Plaintiffs' Motion for Declaratory Judgment, NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc., v. Judicial Council of California (arguing that the California Standards conflict with, and thus are preempted by, the Commission's regulation of SRO arbitration under the Exchange Act and by the Federal Arbitration Act). The brief is available on the Commission Web site at: www.sec.gov/litigation/briefs/nasddispute.pdf. See also Securities Exchange Act Release No. 46881 (Nov. 21, 2002) (describing the controversy regarding new California arbitration provisions).

⁹ PCX will defer action on those pending arbitrations in which the parties did not sign waivers as set forth in Rule 12.35(b)(i)(B). Another PCX rule filing, SR–PCX–2002–77, will address how such arbitrations will be administered, if and when the rule filing is approved by the SEC.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² See n. 3, *supra*.