

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48158; File No. SR-PCX-2003-17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Exchange's Rules Under the Minor Rule Plan

July 10, 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 April 15, 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. On June 6, 2003, the PCX filed Amendment No. 1 to the proposed rule change. 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 proposed rule change was submitted in response to the Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Act, Making Findings and Imposing Remedial Sanctions.³ Pursuant to the Order, the Exchange filed a proposed rule change to adopt new Sanctioning Guidelines for order handling rules which included late trade reporting.⁴ At that time, the Exchange stated that it intended to amend its Minor Rule Plan ("MRP") to increase the sanctions for late trade reporting violations. The Exchange believes that an increase in sanctions is necessary to deter violations of its trade reporting rule. Accordingly, the PCX is proposing to amend the Recommended Fine Schedule ("RFS") of the MRP in order to increase the fines for Late Trade Reporting violations pursuant to PCX Rule 6.69(a). The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in brackets.

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Minor Rule Plan

Rule 10.13

(a)-(j)—No change.

(k)(i) Minor Rule Plan: Recommended Fine Schedule

1-37—No change.

38. Late reporting of trades without reasonable justification or excuse (Rule 6.69(a)).

1st Violation	\$[100]	250
2nd Violation	\$[250]	500
3rd Violation	\$[500]	1,000

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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

1. Purpose

The Exchange proposes to amend the RFS (PCX Rule 10.13(k)(i)(38)) of the MRP in order to increase the fines for Late Trade Reporting violations. PCX Rule 6.69(a) states that all members and member organizations, who are required to report trades either directly to the Options Price Reporting Authority ("OPRA") or to another party responsible for reporting trades to OPRA, shall report the transaction immediately upon execution, which means no later than 90 seconds following execution of the trade.

The purpose of the proposed rule change is based on the following: first, the PCX believes that the current fines are inconsistent with the vast majority of fines that are subject to the MRP. Second, the PCX believes that an increase in the current fines will more adequately sanction and deter violations of late trade reporting. Under the proposed increase, late trade reporting will be fined \$250 for a first violation, \$500 for a second, and \$1,000 for a third, calculated on a two-year basis.

The Exchange believes that the adoption of the proposed rule change will serve to significantly strengthen the ability of the Exchange to carry out its

oversight responsibilities as a self-regulatory organization. The rule should also aid the Exchange in carrying out its surveillance and enforcement functions. Under the proposed rule change, 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.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,⁵ in general, and section 6(b)(5) of the Act,⁶ 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,⁷ 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.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78f(b)(6).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 43268 (September 11, 2000) (File No. 3-10282).

⁴ See Securities Exchange Act Release No. 45416 (February 7, 2002), 67 FR 6777.