

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. On August 13, 2003, the Exchange filed Amendment No.1 to the proposed rule change.³ The Commission received one comment letter regarding the proposed rule change in anticipation of its filing.⁴ 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, on its own behalf and through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE"), pursuant to delegated authority, is proposing to amend the PCX and PCXE arbitration rules. The proposed rule change will expand the applicability of the waiver requirements imposed in SR-PCX-2003-13⁵ from certain pending PCX arbitrations to all PCX and PCXE arbitrations. Specifically, the proposed rule changes would require all parties to an arbitration filed pursuant to PCX or PCXE Rule 12 (other than those described below) to waive (1) the 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 (2) any

claims against the PCX or PCXE that the conduct of the arbitration violates the California Code of Civil Procedure Section 1281.92 ("CCCP Claims"). However, the parties would not be required to waive the CCCP claims in arbitrations solely between or among members, member organizations and persons associated therewith (or, as the case may be, solely between ETP Holders and persons associated therewith) that do not involve consumer-related or employment-related claims.⁶ Both waivers (where required) must be made without condition and in the form required by the PCX and PCXE.⁷ If any party to an arbitration fails to sign the required waivers, the PCX will decline jurisdiction over, dismiss and refund fees paid to PCX or PCXE by the parties for, that arbitration. Furthermore, it will be considered conduct inconsistent with just and equitable principles of trade for any member, member organization, ETP Holder or associated person therewith who is a party to a PCX or PCXE arbitration to fail to waive the California Standards and the CCCP Claims, where required.

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

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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) No change.

(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 the member, member organization or person associated with a member or member*

organization is a party to an arbitration filed pursuant to this Rule 12 [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 the member, member organization or person associated with a member or member organization is a party to an arbitration filed pursuant to this Rule 12 (other than arbitrations solely between or among members, member organizations and/or persons associated with a member or member organization that do not involve consumer-related or employment-related 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];

(d) No change.

(e) No change.

.03 No change.

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Rule 12.35 [Applicability of Arbitration Rules] Waivers

[(a) Reserved.]

[(b) Arbitrations Filed Prior to May 1, 2003. Arbitration claims that were filed prior to May 1, 2003 and remain pending will be administered as follows:]

[(i) The arbitration] *Arbitration* claims will be administered in accordance with this Rule[s] 12[.1 through 12.34] *only* [if]:

[(A) arbitrator(s) have been appointed as of May 1, 2003; 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); *provided, however, that the parties are not required to waive the CCCP claims in arbitrations solely between or among members, member organizations and/or persons associated with a member or member organization that do not involve consumer-related or employment-related claims. PCX will decline jurisdiction over, dismiss and*

³ See letter from Kathryn Beck, Senior Vice President, General Counsel, Chief Regulatory Officer and Corporate Secretary, PCX, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, dated August 12, 2003. In Amendment No. 1, PCX altered its description of the proposed rule change to reflect that a failure to execute required waivers by an industry party to arbitration would be referred for disciplinary action.

⁴ See letter to the Secretary, SEC, from Raghavan Sathianathan, dated July 2, 2003. The commenter expressed concerns regarding PCX's administration of an arbitration in which he was a co-respondent, alleging that PCX did not follow its arbitration rules. The commenter asserted that the PCX had lost its right to make rule changes based on its administration of his arbitration. PCX submitted a letter in response in which it asserted that the commenter's case had been administered properly and in accordance with its rules. PCX also asserted that the proposed rule change reflects PCX's desire to provide an arbitration forum with a reduced risk of subsequent legal exposure to the organization. See letter dated July 30, 2003 from Kathryn Beck, Senior Vice President, PCX, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, SEC.

⁵ See Securities Exchange Act Release No. 47734 (April 24, 2003), 68 FR 23351 (May 1, 2003).

⁶ PCX and PCXE believe that such arbitrations would not be considered "consumer arbitrations" as that term is used in the California Code of Civil Procedure.

⁷ Copies of the prescribed waiver forms were filed as Exhibits A and B to the proposed rule change. These are the same as the waiver forms that were attached to rule filings previously approved by the Commission. See Securities Exchange Act Release No. 46881 (November 21, 2002), 67 FR 71224 (November 29, 2002) (waiver of California Standards); Securities Exchange Act Release No. 47734 (April 24, 2003), 68 FR 23351 (May 1, 2003) (waiver of CCCP Claims).