

The Commission believes that accelerated approval of the Exchange's proposal is essential to allow for immediate harmonization of, and consistency in, the shareholder approval requirements for equity compensation plans among the markets. This will prevent issuers from making listing decisions based on differences in self-regulatory organization shareholder approval requirements and should provide equal investor protection to shareholders on the dilutive effects of plans irrespective of where the security trades. The Commission further believes that making the Exchange's new shareholder approval rules effective upon Commission approval will immediately impose the same requirements on the Exchange's issuers as those imposed upon NYSE, Nasdaq, and Amex issuers. Based on the above, the Commission finds good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,²⁶ to approve the Exchange's proposal and Amendment No. 1 thereto on an accelerated basis.

VI. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,²⁷ that the proposed rule change (SR-CSE-2003-11) and Amendment No. 1 thereto are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁸

Jill M. Peterson,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48735; File No. SR-PCX-2003-50]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the Pacific Exchange, Inc. Relating to its Shareholder Approval Policy for Its Listed Companies Regarding Stock Option Plans and Other Equity Compensation Arrangements

October 31, 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 September 22, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

The Exchange, through PCXE, is proposing to amend its Section 3, Corporate Governance and Disclosure Policies, and more specifically PCXE Rule 5.3(d), Shareholder Approval Policy, relating to stock option plans and other equity compensation arrangements. The Exchange, through PCXE, is also proposing to amend PCXE Rule 9.4, Proxies Voting, to prohibit the holder of an Equity Trading Permit ("ETP") from voting on equity compensation plans unless the beneficial owner of the shares has given voting instructions. The Exchange believes that the proposed changes are aimed at helping to restore investor confidence by strengthening listed companies' corporate governance practices.

Below is the text of the proposed rule change.³ Proposed new language is *italicized*; proposed deleted language is [bracketed].

* * * * *

PCX Equities, Inc.

Rule 5

Listings

Rules 5.1-5.2—No change.

Section 3. Corporate Governance and Disclosure Policies

Corporate Governance and Disclosure Policies

Rule 5.3—No Change.

Rule 5.3(a)-5.3(c)—No Change.

³ Upon the Exchange's request, the Commission made a technical correction to the proposed rule text. Telephone conversation between Steven B. Matlin, Senior Counsel, Regulatory Policy, PCX, and Sapna C. Patel, Special Counsel, Division of Market Regulation, Commission, on October 17, 2003.

Shareholder Approval Policy

Rule 5.3(d) Shareholder Approval Policy

Each issuer shall require shareholder approval of a plan or arrangement pursuant to [under] subparagraphs (1) through (7) below or, prior to the issuance of designated securities under subparagraphs (8) [(2)] through (11) [(4)] below[, when:]

(1) *Shareholder Approval. Except as provided for in this Rule 5.3(d) all equity-compensation plans, and any material revisions to the terms of such plans, must be approved by the shareholders of the listed company.* [A stock option or purchase plan is to be established or other arrangement made pursuant to which stock may be acquired by officers or directors, except for warrants or rights issued generally to security holders of the company or broadly based plans or arrangements including other employees (e.g., ESOPs).

The Corporation will generally not require shareholder's approval as a condition to listing shares reserved for the exercise of options when:

(i) such options are issued to an individual, not previously employed by the company, as an inducement essential to the individual's entering into an employment contract with the company provided that the potential issuance of shares pursuant to such options does not exceed 5% of the company's outstanding common stock; or

(ii) the establishment of a plan or arrangement under which the amount of securities which may be issued does not exceed the lesser of 1% of the number of shares outstanding common stock, 1% of the voting power outstanding, or 25,000 shares and provided that all arrangements adopted without shareholder approval in any five-year period do not authorize, in the aggregate, the issuance of more than 10% of outstanding common stock or voting power outstanding. (For the purpose of calculating the percentage of stock issued in aggregate, stock to be issued pursuant to options which have expired and/or been cancelled shall not be included.)]

(2) *Equity Compensation Plan Defined. An equity compensation plan is a plan or other arrangement that provides for the delivery of equity securities (either newly issued or treasury shares) of the listed company to any employee, director or other service provider as compensation for services. For purposes of this rule, a compensatory grant of options or other equity securities that is not made under*

²⁶ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

²⁷ 15 U.S.C. 78s(b)(2).

²⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.