

business day, or when the Options Floor Trading Committee makes *ad hoc* trading decisions on the trading floor regarding Auto-Ex decisions pursuant to PCX Rule 6.87. In those unique situations, the Exchange notes that the aggrieved party will not have an opportunity to stay the action, but will be able to appeal the committee decision pursuant to PCX Rule 11.7. The Exchange also represents that it will not be required to consider a request for a stay made within the forty-eight hours before a committee implements action.

The proposed new Exchange rule will also provide that the Exchange's Board Appeals Committee may render a decision summarily based solely on the documents submitted in support of, and opposition to, the request for stay. In the event that the Board Appeals Committee denies the request for a stay, the Board Appeals Committee will state the reasons for its denial and state facts that support its decision.<sup>8</sup> The Exchange believes that these procedures will guide applicants through the stay process and will provide the Exchange's Board Appeals Committee with a uniform standard by which to judge the merits of an application for interim relief. The proposed new Exchange rule will not apply to disciplinary matters and will not affect an aggrieved person's underlying right to appeal a committee decision.

### III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b).<sup>9</sup> Specifically, the Commission finds that approval of the proposed rule change, as amended, is consistent with Section 6(b)(5)<sup>10</sup> of the Act in that it is designed to facilitate transactions in securities; 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; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general, to protect investors and the public interest. In addition, the Commission finds that approval of the proposed rule change, as amended, is consistent with Section 6(b)(4) of the Act<sup>11</sup> because it provides for the equitable allocation of reasonable dues, fees and other charges among members, issuers and other persons.

The Exchange proposes to amend Exchange Rule 11.7 to explicitly codify criteria and procedures necessary to request a stay of committee action so that applicants are aware that they have a right to interim relief from committee decisions and to provide applicants with clear guidelines on how to request a stay. The Commission believes that the criteria proposed by the Exchange for evaluating the merits of a stay application, as described above, are similar to criteria that the Commission uses to access requests for stays in connection with petitions seeking review of a Commission order.<sup>12</sup>

The Exchange proposes that applicants must request a stay by the earlier of ten business days after a committee renders its decision or forty-eight hours before the committee implements action. The Commission notes that the Exchange has represented that, at the time of the committee's decision, the applicant will be notified of the date when the committee will implement its action and will therefore be able to assess when he or she would need to file an application to request a stay.<sup>13</sup> In addition, the Exchange represents that it will not be required to consider a request for a stay made within the forty-eight hours before a committee implements action. The Commission recognizes that, under certain circumstances, such as when the Exchange's Options Floor Trading Committee need to make *ad hoc* trading decisions on the trading floor regarding the Exchange's Auto-Ex system, it would be necessary for the committee to take immediate action following a committee decision. In such cases, a request for interim relief from the committee's decision would be

impractical. The Exchange has represented, however, that the applicant would have a right to appeal the decision pursuant to Exchange Rule 11.7.

The Exchange's proposal further permits its Board Appeals Committee to render its decision summarily based solely on the documents submitted in support of, and opposition to, the request for stay, and not on the underlying complaint. The Commission notes that the Exchange has represented that its Board Appeals Committee will notify the applicant if his or her request for a stay is denied and will provide the applicant with the grounds for such denial.

Consequently, the Commission believes that the Exchange's proposed criteria to request a stay of a committee action are clear and that they provide objective and uniform guidelines for applicants. The Commission finds that proposed guidelines for requesting a stay are consistent with the Act.

In addition, the Commission believes that requiring all applicants to pay a \$500 fee to request a stay of committee action is appropriate because it covers the expense for the Exchange to process the applicant's application, and because it applies to all applicants uniformly regardless of whether the request for a stay is accepted or denied.

### IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with sections 6(b)(5)<sup>14</sup> and 6(b)(4).<sup>15</sup>

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-PCX-2002-20) and Amendment No. 1 are approved.

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

**Margaret H. McFarland,**  
Deputy Secretary.

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<sup>8</sup> The Exchange represents that the Board Appeals Committee will notify the applicant of its denial of a request for a stay, as well as the reasons for its denial. Telephone conversation between Mai S. Shiver, Senior Attorney, Regulatory Policy, PCX, and Sapna C. Patel, Attorney, Division of Market Regulation ("Division"), Commission, on January 8, 2003.

<sup>9</sup> 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> See Section 25(c)(2) of the Act, 15 U.S.C. 78y(c)(2), and the Commission's Rules of Practice Rule 401, 17 CFR 201.401(d); see also Commission Order, *supra* note 6.

<sup>13</sup> Telephone conversation between Mai S. Shiver, Senior Attorney, Regulatory Policy, PCX, and Sapna C. Patel, Attorney, Division, Commission, on February 19, 2003.

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> 15 U.S.C. 78f(b)(4).

<sup>16</sup> 15 U.S.C. 78s(b)(2).

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