

(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.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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 Amex. All submissions should refer to File SR-Amex-2001-26 and should be submitted by July 9, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44408; File No. SR-CBOE-2001-14]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Amend Its Rules Regarding Jurisdiction Over Former Members and Associated Persons for Failure To Honor an Exchange Arbitration Award

June 11, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 27,

2001, the Chicago Board Options Exchange, Inc. ("CBOE" 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 CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The CBOE proposes to amend its rules regarding jurisdiction over former members and associated persons for failure to honor an Exchange arbitration award.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

#### 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 CBOE 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 CBOE 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 proposed to amend its rules to provide that the failure to honor a CBOE arbitration award by a former Exchange member or associated person would subject such former member or associated person to the disciplinary jurisdiction of the Exchange regardless of the date of termination of membership.

Chapter 18 of the Exchange's rules governs the CBOE's arbitration process. CBOE Rule 18.37 provides that any member or person associated with a member who fails to honor an Exchange arbitration award shall be subject to CBOE disciplinary proceedings. Furthermore, CBOE Rule 18.1, Interpretation and Policy .02 states that it may be deemed conduct inconsistent with just and equitable principles of trade to fail to honor a CBOE arbitration award. Conduct inconsistent with just and equitable principles of trade is a violation of Exchange Rule 4.1, and is

thus subject to CBOE disciplinary proceedings.

Chapter 17 of the Exchange's rules governs the CBOE disciplinary process. Generally, the Exchange maintains disciplinary jurisdiction over its members, and persons associated with its members, with respect to instances where members or associated persons are alleged to have violated or aided and abetted a violation of any provision of the Act, the rules and regulations promulgated thereunder, or any constitutional provisions, by-laws or rules of the Exchange or any interpretation thereof or resolution of the Board of the Exchange regulating the conduct of business on the Exchange.

Thus, a member or person associated with a member who fails to honor an Exchange arbitration award has violated CBOE Rule 18.37 and CBOE Rule 4.1 and is subject to disciplinary proceedings under Chapter 17. Currently, however, such failure to honor a CBOE arbitration award by a former member, or former person associated with a member, may not always be subject to the Exchange's disciplinary jurisdiction.

CBOE Rule 17.1(b) provides that members (or associated persons) shall continue to be subject to the disciplinary jurisdiction of the Exchange following such member's (associated person's) termination of membership (association with a member) with respect to matters that occurred prior to such termination, provided that written notice of the commencement of an inquiry into such matters is given by the Exchange to such former member (person) within one year of the Exchange's receipt of notice of such termination. This provision allows for certain anomalies in the context of failure to pay arbitration awards. For example, the following scenario is possible: A customer is involved in a trading dispute with a CBOE member. Months later, the CBOE member terminates its membership on the Exchange. Weeks after the membership termination, the customer files an arbitration claim with the CBOE Arbitration Department against the former member.<sup>3</sup> One and one-half years after the membership termination, the customer prevails in the arbitration proceeding, and a monetary award is

<sup>3</sup> CBOE Rule 18.1, Interpretation and Policy .01 provides, among other things, that former members and associated persons are subject to Exchange arbitration proceedings with respect to any dispute claim or controversy arising out of the Exchange business of such former member or associated person that took place while such member or associated person was still a member or associated person.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

imposed against the former member. Nevertheless, the former member subsequently fails to honor the arbitration award. Because more than one year has lapsed since the former member's termination of membership and the Exchange did not provide written notice of the commencement of an inquiry into the failure to pay the award, the Exchange could not assert disciplinary jurisdiction over the former member. The Exchange believes this is problematic given the fact that the dispute concerned Exchange-related business, and that the award was pursuant to an Exchange arbitration proceeding.

While the Exchange notes that the customer in the above example would be able to seek enforcement of the award in the court system, the inability of the Exchange to even potentially take disciplinary measures undermines the credibility of the CBOE arbitration forum. Therefore, the proposed rule change would essentially eliminate the notice requirement in Rule 17.1(b) solely with respect to instances where the Exchange seeks to take disciplinary measures with respect to a former member or person associated with a member for failure to honor an arbitration award pursuant to Chapter 18.

## 2. Statutory Basis

The Exchange believes that the proposed rule change will strengthen the Exchange's arbitration process and allow the Exchange to take action for non-compliance with its arbitration rules. Accordingly, the Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b)(1),<sup>4</sup> 6(b)(6),<sup>5</sup> 6(d)(1)<sup>6</sup> and 19(d) of the Act.<sup>7</sup>

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

The Exchange represents that the proposed rule change will impose no burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

## 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 self-regulatory organization consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange.

All submissions should refer to File No. SR-CBOE-2001-14 and should be submitted by July 9, 2001.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44403; File No. SR-PCX-99-45]

### **Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Relating to Housekeeping Amendments to Rules Governing Floor Brokers**

June 8, 2001.

## I. Introduction

On November 5, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change making housekeeping amendments to the Exchange's rules governing floor brokers. On March 23, 2000, the PCX filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, including Amendment No. 1, was published for comment in the **Federal Register** on June 8, 2000.<sup>4</sup> On January 8, 2001, the PCX filed Amendment No. 2 to the proposed rule change.<sup>5</sup> No comments were received on the proposal. This order approves the proposal, as amended.

## II. Description Proposal

In its proposed rule change, the Exchange seeks to modify its options floor broker rules by renumbering certain Options Floor Procedure Advices ("OFFPAs"),<sup>6</sup> clarifying existing

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Robert P. Pacileo, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), SEC, dated March 22, 2000 ("Amendment No. 1").

<sup>4</sup> Securities Exchange Act Release No. 42861 (May 30, 2000), 65 FR 36489.

<sup>5</sup> See letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, SEC, dated January 5, 2001 ("Amendment No. 2"). In Amendment No. 2, the Exchange made technical changes to the titles of PCX Rule 6.47(b) and PCX Rule 6.47(c). Also, the Exchange revised PCX Rule 6.47(b) to indicate that subsections (4)-(6) had been added to the rule since the time the proposed rule change was filed. See Securities Exchange Act Release No. 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000). Next, the Exchange added "and Rule 6.73" to the last sentence of PCX Rule 6.47(d). Finally, the Exchange deleted the last two sentences of Commentary .05 to PCX Rule 6.47.

<sup>6</sup> The following OFFPAs are proposed to be renumbered as PCX rules: OFFPA A-10, Subject: Broker Responsibility on Print-Throughs, as PCX Rule 6.46(d). In addition, the Exchange seeks to

<sup>4</sup> 15 U.S.C. 78f(b)(1).

<sup>5</sup> 15 U.S.C. 78f(b)(6).

<sup>6</sup> 15 U.S.C. 78f(d)(1).

<sup>7</sup> 15 U.S.C. 78s(d).

<sup>8</sup> 17 CFR 200.30-3(a)(12).