

• In contrast to the other commenters, NFA's FCM Advisory Committee felt that NFA should not issue interpretive guidance on the use of AORs. The FCM Advisory Committee believes that decisions regarding AORs should be a matter of business judgment, not regulation.

Special Committee's Response to Comments

The Special Committee considered all of the comments that it received. Although it recognizes the FCM Advisory Committee's concerns, the Special Committee continues to believe that its mandate from the Board requires it to propose interpretive guidance. The Special Committee also believes, however, that the industry needs guidance and that it is appropriate for NFA to issue it. The Special Committee believes that the interpretive notice provides that guidance by clarifying existing requirements.

As noted above, some of the commenters felt the interpretive notice was too prescriptive. As a general matter, the Special Committee believes that the standards must be clear enough to provide meaningful guidance and ensure that firms can be audited for compliance. The Special Committee did, however, agree with a number of the specific comments that were made and revised the interpretive notice accordingly.

Finally, despite some comments, the Special Committee believes that the supervisory procedures should be in writing. It did, however, add a footnote to clarify that the procedures do not have to contain technical specifications or duplicate procedures that are documented elsewhere.

The Board agreed with the Special Committee's conclusions and adopted the Interpretive Notice as recommended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change will become effective upon approval by the CFTC. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.⁷

⁷ 15 U.S.C. 78s(b)(1).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Comments also may be submitted electronically to the following e-mail address: rule-comments@sec.gov. 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 these filings also will be available for inspection and copying at the principal office of NFA. Electronically submitted comments will be posted on the Commission's Internet website (<http://www.sec.gov>). All submissions should refer to File No. SR-NFA-2002-01 and should be submitted by May 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45793; File No. SR-PCX-2002-11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. To Limit the Number of Exchange Memberships That Any Person, Associated Person, or Group of Associated Persons May Own

April 22, 2002.

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 February 6, 2002, the Pacific Exchange, Inc.

⁸ 17 C.F.R. 200.30-3(a)(75).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

("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. 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 Exchange proposes to adopt a new rule that would limit to 15% the number of Exchange memberships that any person, associated person, or group of associated persons may own directly or indirectly, without an exemption from the Exchange's Board of Governors ("Board").

The text of the proposed rule change appears below. New text is in italics.

* * * * *

Rule 1.21(d) No person, associated person or group of associated persons may directly or indirectly beneficially own, or control the voting rights of, more than 15% of the number of authorized memberships of the Exchange unless expressly authorized by the Board through a two-thirds majority of those Governors voting at a meeting at which a quorum is present, provided that such authorization must be approved by not less than a majority of all Governors. In the event that a person, associated person or group of associated persons acquires beneficial ownership of, or control the voting rights of, memberships in excess of this 15% limit as a result of a merger or acquisition of a member firm, then the following will apply: (i) such person, associated person or group of associated persons will not be entitled to exercise any voting rights attached to any memberships in excess of 15% of the number of authorized memberships; and (ii) such person, associated person or group of associated persons must reduce the number of memberships beneficially owned to comply with this Rule within two years.

* * * * *

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 Exchange 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 is proposing to adopt new PCX Rule 1.21(d), which would provide that no person, associated person, or group of associated persons may directly or indirectly beneficially own, or control the voting rights of, more than 15% of the number of authorized memberships of the Exchange. However, under the proposed rule change, exceptions to the 15% limit are permitted if they are expressly authorized by the Exchange's Board through a two-thirds majority of those Governors voting at a meeting at which a quorum is present, provided that such authorization must be approved by not less than a majority of all Governors. The Exchange represents that it currently has 552 authorized PCX memberships. Therefore, the seat ownership limit under the proposed rule change would be 82.

The proposed rule change further provides that in the event that a person, associated person, or group of associated persons acquires beneficial ownership of, or controls the voting rights of, memberships in excess of the 15% limit as a result of a merger or acquisition of a member firm, then the following will apply: (i) Such person, associated person, or group of associated persons will not be entitled to exercise any voting rights attached to any memberships in excess of 15% of the number of authorized memberships; and (ii) such person, associated person, or group of associated persons must reduce the number of memberships beneficially owned to comply with this proposed rule within two years.

The Exchange represents that the proposed rule change is intended to assure that the Exchange's memberships do not become unduly concentrated and thereby subject to domination by a particular member or member organization's own interest.

2. Statutory Basis

The PCX believes that the proposal is consistent with Section 6(b) of the Act,³ in general, and furthers the objectives of Section 6(b)(3) of the Act⁴ in particular, in that it is designed to assure that the Exchange maintains a fair

representation of its members in the selection of its directors and administration of its affairs. The Exchange further believes that the proposal furthers the objectives of Section 6(b)(5) of the Act⁵ in that it is designed to promote just and equitable principles of trade and in general, to protect investors and the public interest.

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

The PCX 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.

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 PCX. All submissions should refer to file number SR-PCX-2002-11 and should be submitted by May 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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OFFICE OF SPECIAL COUNSEL

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies

AGENCY: United States Office of Special Counsel

ACTION: Draft Report and Guidelines

SUMMARY: The U.S. Office of Special Counsel (OSC) is publishing its draft report to the Office of Management and Budget (OMB), including proposed guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of certain information disseminated by the agency to the public. This draft report is published pursuant to guidelines issued by OMB to federal agencies. See 66 FR 49718 (September 28, 2001) (Final Guidelines, with Request for Comments) and 67 FR 369 (January 3, 2002) (Final Guidelines), as corrected and/or amended at 67 FR 5365 (February 5, 2002), 67 FR 8452 (February 22, 2002), and 67 FR 9797 (March 4, 2002). OMB issued its guidelines under section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554, 114 Stat. 2763). The guidelines call for each agency to develop a draft report to OMB, including agency guidelines designed to ensure the quality, objectivity, utility, and integrity of certain information disseminated by the agency to the public. The draft agency report and guidelines must be published in the Federal Register and posted on the agency's web site by May 1, 2002, for public comment. After reviewing any public comments received, and making any appropriate changes, each agency must send the final draft of its report and guidelines to OMB for review by July 1, 2002. The final agency report and guidelines must be published in the

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(3).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 17 CFR 200.30-3(a)(12).