

necessary in the interests of a fair and orderly market.

Specifically, the Commission believes that it is reasonable to declare a trading halt in a particular security for a period exceeding two consecutive business days without requiring the specific approval of a majority of the Exchange's Board. The Commission recognizes that it may be impractical to convene the Board each time a determination must be made as to whether to extend a trading halt in a particular security beyond two consecutive business days. The Commission notes that in eliminating the Board's participation in the decisionmaking process, the proposed rule change, as amended, does not provide unbridled discretion to the Exchange's Floor Officials to declare a trading halt of such duration. Instead, the Commission notes that the proposal, as amended, requires two procedures which the Commission believes will provide some assurances that a decision to halt trading in a security for longer than two consecutive business days will receive proper consideration. First, the Commission believes that the involvement of a senior Exchange official should ensure that the interests of all market participants are carefully considered in determining the propriety of a trading halt. Second, the review of each trading halt declared exceeding two consecutive business days by the Exchange's Floor Officials Committee should ensure that the CBOE's management structure remains apprised of the manner in which the proposed rules are applied. In the event that the Exchange's Floor Officials Committee determines that the rules are not being applied in an even-handed and fair manner, the Commission expects the Exchange to reevaluate the process and propose changes, as necessary.

The Commission finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that Amendment No. 1 further clarifies the process by which a determination is made to halt trading in a particular security for more than two consecutive business days. The Commission believes that requiring the consultation of a senior Exchange official and review by the Exchange's Floor Officials Committee clarifies the discretion granted to Floor Officials with respect to trading halts and raises no new regulatory issues. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act¹⁰ to approve Amendment No. 1 to

CBOE's proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of all such filings will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR-CBOE-97-35 and should be submitted by December 3, 1997.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-CBOE-97-35), including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39295; File No. SR-PCX-97-38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Charges and Recommended Fines for Late SIPC Reports

November 4, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, notice is hereby given that on

¹¹ 15 U.S.C. 78s(b)(2).
¹² 17 CFR 200.30-3(a)(12).
¹ 15 U.S.C. 78s(b)(1)(1994).

October 14, 1997, 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 PCX. 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 is proposing to modify the late charges and recommended fines applicable to members' late filing of forms and assessments with the Exchange pursuant to the Securities Investor Protection Act of 1970 ("SIPA").² The text of the proposed rule change is below. Additions are italicized; deletions are bracketed.

Text of the Proposed Rule Change

Financial Reports

¶3405

Rule 2.12(a)—(b)(1)—No change.

Rule 2.12(b)(2). Each member organization *for which the Exchange is the designated collection agent must* [shall] file with the Exchange such forms and assessments as are required pursuant to the Securities Investor Protection Act of 1970. Any member organization that fails to file such form or assessment in a timely manner *will* [shall] be subject to a late filing charge as follows:

Number of days late	Amount of charge
1-30	[\$200] \$100
31-60	[400] 200
61-90	[800] 300

Provided however: (A) If a member organization files its SIPC form and assessment after its receipt of SIPC's final late notice, but files within five business days after its receipt of SIPC's final late notice, such member organization *will* [shall] be subject to a fine pursuant to Rule 10.13; and (B) if a member organization fails to file its SIPC form and assessment within five business days after its receipt of SIPC's final late notice, such member organization *will* [shall] be subject to formal disciplinary action pursuant to Rule 10.3.

Commentary:

.01-.02—No change.

* * * * *

² 15 U.S.C. 78aaa-78111(1994).

¹⁰ 15 U.S.C. 78f(b)(5).

Minor Rule Plan

¶6133

Rule 10.13(a)—(j)—No change.

(k) Minor Rule Plan: Recommended

Fine Schedule

(i)—(ii)—No change.

(iii) Record Keeping and Other Minor Rule Violations

1. No change.

2. Failure to file a Securities Investors Protection Corporation form and assessment in a timely manner. (Rule 2.12(b))

[\$1,200.00]	[\$1,800.00]	[\$2,400.00]
\$500	\$1,000	\$1,500

3.–6. No change.

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 PCX 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**(a) Purpose**

PCX Rule 2.12(b)(2) provides that each member organization is required to file with the Exchange such forms and assessments as are required pursuant to SIPA. Rule 2.12(b)(2) further provides that any member organization that fails to file such form or assessment will be subject to a late charge of \$200 if 1–30 days late; \$400 if 31–60 days late; and \$800 if 61–90 days late. The Exchange is proposing to reduce these charges to \$100, \$200 and \$300, respectively.

PCX Rule 2.12(b)(2) further provides that, if a member organization files its form and assessment after its receipt of the final late notice from the Securities Investor Protection Corporation ("SIPC"), but files within five business days after its receipt of SIPC's final late notice, such member organization will be subject to a fine pursuant to the Exchange's Minor Rule Plan.³ The current recommended fines for such violations are \$1,200 for a first violation, \$1,800 for a second violation and \$2,400

for a third violation.⁴ The Exchange is proposing to reduce these recommended fines to \$500, \$1,000 and \$1,500 for first, second and third violations, respectively.

(b) Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5) of the Act, in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest. The Exchange notes that the amounts of the charges and fines were originally based upon proposed fines and charges for late FOCUS Reports.⁵ However, after reconsidering the levels of these fines, the Exchange believes that the filing of late FOCUS reports raises more serious investor protection concerns and warrants a higher fine than the filing of late SIPC reports.

The Exchange also believes that the proposal is consistent with Section 6(b)(4) in that it provides for the equitable allocation of reasonable charges among its members and it is consistent with Section 6(b)(7) in that it provides a fair procedure for the disciplining of members. The late charges and fines applicable to late SIPC reports were adopted originally in 1992 and 1993, respectively.⁶ Since that time, the Exchange has reconsidered the levels of these recommended fines and has determined that the penalties are too severe for the violations at issue. The Exchange notes that SIPC has determined, for the years 1996 and 1997, to assess all of its members a flat minimum assessment of \$150 (rather than a percentage of net revenues). In that regard, the Exchange believes that a reduction in charges and recommended fines for lateness is warranted.

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

The Exchange 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.

⁴ PCX Rule 10.13(k)(iii)(2).

⁵ Securities Exchange Act Release No. 32510 (June 24, 1993) 58 FR 35491 (July 1, 1993) (order approving File No. SR-PSE-92-15).

⁶ Securities Exchange Act Release Nos. 33347 (December 15, 1993) 58 FR 67888 (December 22, 1993) (order approving File No. SR-PSE-93-21) (adopting late charges); and 32510 (June 24, 1993) 58 FR 35491 (July 1, 1993) (order approving File No. SR-PSE-92-15) (amending the Exchange's Minor Rule Plan and adopting recommended fines).

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

The proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore, has become effective on October 14, 1997, pursuant to Section 19(b)(3)(A)(ii)⁷ of the Act and Rule 19b-4(e)(2)⁸ thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-97-38 and should be submitted by December 3, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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⁷ 15 U.S.C. 78s(b)(3)(A)(ii) (1994).

⁸ 17 CFR 240.19b-4(e)(2) (1997).

⁹ 17 CFR 200.30-3(a)(12) (1997).

³ PCX rule 10.13(f)(2).