

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. OCC-99-06) be and hereby is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41881; File No. SR-PCX-99-16]

Self-Regulatory Organizations; Pacific Exchange, Inc. ("PCX"); Order Approving Proposed Rule Change and Notice of Filing and Order granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change Requiring Qualified Off-Floor Traders for Which PCX Is the Designated Examining Authority To Successfully Complete the General Securities Registered Representative Examination, Test Series 7

September 17, 1999.

On June 1, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")¹ and Rule 19b-4 thereunder.² The proposed rule change would amend PCX Rule 1.7(b)(9), Denial of and Conditions to Membership, to require off-floor traders³ of member organizations for which the Exchange is the Designated Examining Authority ("DEA") to successfully complete the General Securities Registered Representative Examination, Test Series 7 ("Series 7 Exam"), if the primary business of the member organization involves the trading of securities that is unrelated to the performance of the functions of a registered specialist, a registered market maker or a registered floor broker.

Notice of the proposed rule change was published in the **Federal Register**

on July 2, 1999.⁴ The Commission received no comment letters on the proposal. On September 16, 1999, the Exchange filed Amendment No. 1 with the Commission, which revised the rule text and made technical changes to the proposal.⁵ This order approves the proposed rule change, as amended.

I. Background and Summary

PCX Rule 1.7(b)(9) currently provides that the Exchange may deny (or may condition) membership, or may prevent a natural person from becoming associated (or may condition an association) with a member, when an applicant, directly or indirectly, does not successfully complete such written proficiency examinations as required by the Exchange to enable it to examine and verify the applicant's qualifications to function in one or more of the capacities applied for. The Exchange proposes to amend PCX Rule 1.7(b)(9) to expressly require off-floor traders to successfully complete the Series 7 Exam. Specifically, the proposal provides that traders of member organizations for which the Exchange is the DEA must successfully complete the Series 7 Exam if the primary business of the member organization involves the trading of securities which is unrelated to the performance of the functions of a registered specialist, a registered market maker or a registered floor broker. The proposal further provides that the following are exempt from the requirement to successfully complete the Series 7 Exam: Exchange members who perform the function of a registered specialist, registered market maker, or registered floor broker (pursuant to PCX Rules 5.27(a), 6.33 or 6.44, respectively), and associated persons of member firms who facilitate the execution of stock transactions for the accounts of options market makers.⁶

⁴ Securities Exchange Act Release No. 41555 (June 24, 1999), 64 FR 36063.

⁵ See *supra* n. 3, Amendment No. 1.

⁶ The Exchange has represented that no person may perform the function of a registered specialist, registered market maker or registered floor broker on the Exchange trading floors without first passing a specified examination. Specifically, Equity floor members must pass the Equity Member Test and Options floor members must pass the Options Floor Qualification Examination. There are two Equity Member Tests, one for specialists and one for floor brokers. While there is only one Options Floor Qualification Examination, there are separate sections of the exam: one for floor brokers, one for market makers, and one for both floor brokers and market makers. See *supra* n. 3, Amendment No. 1. According to the Exchange, there are a small number of off-floor traders, primarily associated with Options floor members, who will be exempt from the examination requirement. Telephone conversation among Michael D. Pierson, Director, Regulatory Policy, PCX, Nancy Sanow, Senior Special Counsel, Division, SEC and Joseph Morra, Attorney, Division, SEC, September 15, 1999.

For purposes of PCX Rule 1.7(b)(9), the term "trader" is defined as a person who is directly or indirectly compensated by an Exchange member organization or who is any other associated person of an Exchange member organization, and who trades, makes trading decisions with respect to, or otherwise engages in the proprietary or agency trading of securities.⁷ In addition, the term "primary business" is defined as greater than 50% of the member organization's business.

The proposed rule change further provides that each member organization for which the Exchange is the DEA must complete on an annual basis and on a form prescribed by the Exchange a written attestation as to whether the member organization's primary business is performing the function of a registered specialist, a registered market maker, or a registered floor broker (pursuant to PCX Rules 5.27(a), 6.33 or 6.47, respectively).

The proposed rule change also states that the requirement to complete the Series 7 Exam will apply to current traders of member organizations that meet the specified criteria as well as to future traders of member organizations that meet the specified criteria at a later date. It further provides that traders of member organizations that meet the specified criteria at the time of the Commission's approval of the proposed rule must successfully complete the Series 7 Exam within six months of the date of notification by the Exchange.

II. Discussion

Under Section 19(b)(2) of the Act,⁸ the Commission is required to approve a proposed rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization ("SRO"). Under the Act, SROs are assigned rulemaking and enforcement responsibilities for regulating the securities industry for the protection of investors and for related purposes. A key requirement for SROs is to assure that associated persons⁹ of their members satisfy prescribed standards of

⁷ *Id.*

⁸ 15 U.S.C. 78s(b)(2).

⁹ As defined in Section 3(a)(21) of the Act, an associated person of a member is "any partner, officer, director, or branch manager of such member (or any person occupying a similar status or performing similar functions), any persons directly or indirectly controlling, controlled by, or under common control with such member, or any employee of such member." 15 U.S.C. 78c(a)(21). The off-floor traders covered by the Exchange's proposed rule change are associated persons of the member firm.

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ According to the Exchange, the proposed rule change is intended to cover persons who are trading from off the trading floor and who are not exempt from having to pass the Series 7 examination under the proposed rule. See Letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), SEC (Sept. 15, 1999) ("Amendment No. 1").

training, experience, and competence as a condition to membership.¹⁰

The Commission finds that the Exchange's proposal is consistent with the requirements of Section 6 of the Act, and particularly Sections 6(b)(5)¹¹ and 6(c)(3) (A) and (B)¹² thereunder, for the reasons discussed below.

A review of the Act and its legislative history, as well as subsequent amendments, reveals that one of the Act's most important objectives is to maintain the integrity and competency of securities industry personnel. To this end, Congress has authorized the Commission to comprehensively regulate the securities activities of member firms and their associated persons by, among other things, ensuring that all natural persons associated with a broker-dealer meet such standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors.¹³

Moreover, Section 15(b)(7)(C) of the Act¹⁴ provides that the Commission may rely on the registered securities associations and national securities exchanges to "require registered brokers and dealers and persons associated with such brokers and dealers to pass tests administered by or on behalf of any such association or exchange." To further the goals of Section 15(b)(7) of the Act,¹⁵ the Commission in 1993 adopted Rule 15b7-1, which prohibits registered broker-dealers from effecting any transaction in, or inducing the purchase or sale of, any security unless any natural person associated with such broker or dealer who effects or is involved in effecting such transaction is registered or approved in accordance with the standards of training, experience, competence, and other qualification standards (including but not limited to submitting and maintaining all required forms, paying all required fees and passing any required examinations) established by the rules of any national securities exchange of which such broker or dealer is a member.¹⁶

In addition, Section 6(c)(3)(A) of the Act¹⁷ provides that a national securities exchange may deny membership to, or condition the membership of, a

registered broker-dealer if any natural persons associated with such broker or dealer do not meet such standards of training, experience and competence as are prescribed by the rules of the exchange.¹⁸ Also, under Section 6(c)(3)(B) of the Act,¹⁹ a national securities exchange may bar a natural person from becoming associated with a member if the person does not meet the exchange's standards of training, experience, or competence, or if the person has engaged and there is a reasonable likelihood the person will engage again in acts or practices inconsistent with just and equitable principles of trade. Under these statutory provisions, the various national securities exchanges, including PCX, are empowered to implement rules establishing the prerequisites to qualify and approve persons associated with member organizations to engage in securities activities.

The Act's legislative history also demonstrates the strong concerns of Congress regarding the expertise and competency of persons associated with the brokerage industry. One of the primary objectives of Congress in amending the Act in 1964 was "to strengthen the standards of entrance into the securities business, enlarge the scope of self-regulation, and strengthen Commission disciplinary controls over brokers, dealers, and their employees."²⁰ The Senate Report further noted that "[o]ne of the basic purposes of the Securities Exchange Act of 1934 is to regulate the conduct of broker-dealers and persons associated with them, both through direct Commission controls and through self-regulation by industry groups, with appropriate Commission oversight."²¹ The Senate Report emphasized the importance of screening the integrity and competence of those persons involved in the securities industry.²²

¹⁸ Under Section 15(b)(8) of the Act, all registered brokers or dealers must be members of an SRO—either a securities association or a national securities exchange. 15 U.S.C. 78o(b)(8).

¹⁹ 15 U.S.C. 78f(c)(3)(B).

²⁰ S. Rep. No. 379, 88th Cong. 1st Sess. 1 (1963) ("Senate Report").

²¹ *Id.* at 38.

²² The Senate Report noted the following:

The findings of the Special Study show that—because of the complex nature of the securities markets, the reliance which the investing public necessarily places upon the competence and character of professionals in those markets, and the responsibilities which are assumed—the existing ease of entry for inexperienced and unqualified persons subjects the investing public to undue hazards and unnecessarily complicates the task of regulation.

Id. at 43–44. In this regard, the national securities exchanges and associations were specifically charged to enhance their regulation of associated

The Commission finds that the Exchange's proposal is a well-established and accepted practice in the securities industry and is directly related to one of the most important objectives of the Exchange Act—maintaining the integrity and competency of securities industry personnel.

Off-floor traders of member organizations of the PCX are participants in the securities industry. As associated persons of members of PCX, they are required to comply with the Commission's and the Exchange's rules pertaining to broker-dealers and their associated personnel, including qualification requirements established to assure that they maintain the degree of integrity and competency expected of securities industry personnel. Requiring these off-floor traders to pass the Series 7 Exam will further the objectives of Sections 6(c)(3)(A) and (B)²³ of the Act, which are intended to assure that associated persons are sufficiently familiar with Commission and SRO requirements and procedures when they are closely connected to the securities industry.

The proper education of securities industry personnel is but one component of a carefully considered statutory and regulatory framework designed to promote the integrity of securities markets and protect investors. By successfully completing the Series 7 Exam, these off-floor traders should develop a greater understanding of securities products, risks, and regulations appropriate for associated persons.

Moreover, the proposed rule change is consistent with the provisions of Section 6(b)(5)²⁴ of the Act requiring, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. The Series 7 Exam test for proficiency in a broad range of securities matters, including anti-fraud and anti-manipulation regulation. Without proper training, these associated persons may inadvertently engage in transactions that are improper under the federal securities laws and regulations

persons: "Development and administration of such standards is a matter which is peculiarly appropriate for self-regulation under Commission supervision; and the establishment of such requirements, in conjunction with the requirement of membership in a regulatory body, should significantly simplify regulation and improve investor protection." *Id.* at 44.

²³ 15 U.S.C. 78f(c)(3)(A) and (B).

²⁴ 15 U.S.C. 78b(5).

¹⁰ See 15 U.S.C. 78f(c)(3)(B).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78f(c)(3) (A) and (B).

¹³ See Section 15(b)(7) of the Act, 15 U.S.C. 78o(b)(7).

¹⁴ 15 U.S.C. 78o(b)(7)(C).

¹⁵ 15 U.S.C. 78o(b)(7).

¹⁶ 17 CFR 240.15b7-1.

¹⁷ 15 U.S.C. 78f(c)(3)(A).

or rules of the SROs. In the Commission's opinion, the proposed rule revision satisfies the objectives of Section 6(b)(5) ²⁵ of the Act because, by satisfactorily completing the Series 7 Exam, off-floor traders will gain a greater understanding of the regulations, procedures and principles governing the securities industry.

The Commission also finds that the proposal will bring the Exchange's qualification requirements in line with those of other securities exchanges by adding testing requirements for off-floor traders who are not covered by the current qualification requirements for traders on the floor of the Exchange.²⁶ The Series 7 Exam was adopted as an industry-wide qualification examination in 1974. Other securities exchanges currently require traders off the floor of the exchange to pass the Series 7 Exam.²⁷ The examination requirement for off-floor traders at PCX will enhance the consistency of exam requirements across the exchanges and prevent traders off the floor of the Exchange from associating with members of PCX solely to avoid the examination requirements of other SROs.

The Commission also finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. Amendment No. 1 conforms the proposal to similar rules of other self-regulatory organizations.²⁸ For these reasons, the Commission finds good cause for accelerating approval of the proposed rule change, as amended.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, 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, N.W., Washington, D.C. 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 the filing will also be available for inspection and copying at the principal offices of the PCX. All submissions should refer to File No. SR-PCX-99-16 and should be submitted by October 15, 1999.

IV. Conclusion

The Commission finds that the proposed rule change, as amended, is consistent with the Act, and in particular, with Sections 6(b)(5) and 6(c)(3)(A) and (B).²⁹

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁰ that the proposal, SR-PCX-99-16, as amended, be and hereby is approved.³¹

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³²

Margaret H. McFarland,

Deputy Secretary.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA-99-5143; Notice No. 99-6]

Safety Advisory: Use of Aluminum Pressure Relief Valves on Portable Tanks and Cargo Tanks in Anhydrous Ammonia Service

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Safety advisory notice.

SUMMARY: RSPA was recently advised of the use of aluminum pressure relief valves on portable tanks and cargo tanks that are used for the transportation of anhydrous ammonia which is not authorized by the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180). The intent of this notice is to ensure safety and facilitate compliance with the HMR by clarifying applicable regulatory requirements pertaining to aluminum pressure relief valves.

²⁹ 15 U.S.C. 78f(b)(5), 15 U.S.C. 78f(c)(3)(A) and (B).

³⁰ 15 U.S.C. 78s(b)(2).

³¹ In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³² 17 CFR 200.30-3(a)(12).

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Karim, Office of Hazardous Materials Standards, telephone (202) 366-8553, Research and Special Programs Administration, Mr. Ronald Kirkpatrick, Office of Hazardous Materials Technology, telephone (202) 366-4545, Research and Special Programs Administration, or Mr. Danny Shelton, Office of Safety and Technology, telephone (202) 366-6121, Federal Highway Administration (FHWA).

SUPPLEMENTARY INFORMATION: The Research and Special Programs Administration (RSPA; "we") has been advised of the use of aluminum pressure relief valves on specification DOT 51 portable tanks, MC 330 and MC 331 cargo tanks, and certain non-specification cargo tanks used in anhydrous ammonia service. The purpose of this advisory guidance is to remind persons who offer for transportation or transport anhydrous ammonia of their responsibility for meeting the applicable specification requirements of part 178, and the provisions for the use of portable tanks in § 173.32(m), cargo tanks in § 173.33(b), and general requirements for packaging and packages contained in § 173.24(e)(1) and (2). The use of aluminum valves in anhydrous ammonia service may present a potential safety hazard due to the severe chemical attack/corrosion that may occur as a result of contact with anhydrous ammonia. The purpose of a pressure relief device is to discharge pressure to protect a tank from being over-pressurized. A corroded pressure relief device is not likely to perform its required function and may fail with a resulting release of anhydrous ammonia.

The general compatibility requirement in § 173.24(e) states that "packaging materials and contents must be such that there will be no significant chemical or galvanic reaction between the materials and contents of the package." We believe significant corrosion of aluminum pressure relief devices is a result of a chemical reaction with the anhydrous ammonia. This is particularly true when water has been added to anhydrous ammonia for carriage in quenched and tempered ("QT") steel tanks as specified in § 173.315(l).

The use of aluminum valves on MC 330, MC 331 cargo tanks, and DOT 51 portable tanks is specifically prohibited by Note 12 of the § 173.315 Table. This is true also of non-specification tanks authorized by Note 17 of the § 173.315 Table. For nurse tanks, § 173.315 (m) provides an exception, but that

²⁵ *Id.*

²⁶ The Exchange notes that no person may perform the function of a registered specialist, registered market maker or registered floor broker on the PCX trading floors without first passing a specified examination. See *supra* n. 3, Amendment No. 1.

²⁷ See New York Stock Exchange Rule 345; American Stock Exchange Rule 341; Chicago Stock Exchange Article VI, Rule 3; and Philadelphia Stock Exchange Rule 604.

²⁸ *Id.*