



RULE
ADOPTION
NOTICE

RAN-05-30
April 18, 2005

**TO: All OTP Holders and OTP Firms
ETP Holders and Sponsored Participants**

FROM: Department of Regulatory Policy

**SUBJECT: Arbitration Last Minute Adjournments
(File No. SR-PCX-2004-124)**

On December 15, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission a proposed rule change to amend PCX Rules 12.6 and 12.18 and PCXE Rules 12.7 and 12.19 to modify the arbitration adjournment provision to charge parties a fee of \$100.00 per arbitrator in the event that a hearing is adjourned within three business days of a scheduled hearing session. The Exchange filed Amendment Nos. 1 and 2 to the proposed rule change on February 3, 2005 and Amendment No. 3 on February 28, 2005. The Commission approved the proposed rule change on April 8, 2005.

The following is the text of the rule change. Questions regarding this bulletin may be directed to Tania J.C. Blanford at (415) 393-4107.

EXHIBIT 5
Text of the Proposed Rule Change:¹

Rules of the Pacific Exchange, Inc.

Rule 12
Arbitration

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Settlements

Rule 12.6(a) All settlements upon any matter submitted shall be at the election of the parties.

(b) If the parties agree to settle their dispute, they will remain responsible for payment of fees incurred, including fees for previously scheduled hearing sessions and fees incurred as a result of adjournments, pursuant to Rule 12.18(d).

¹ New text is underscored; deleted text is in brackets.

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Adjournments

Rule 12.18(a) – (c) – No change.

(d) If an adjournment request is made by one or more parties and granted within three business days of a scheduled hearing session, not including prehearing sessions, the party or parties making the request shall pay an additional fee of \$100 per arbitrator to compensate the arbitrator for the inconvenience due to last minute adjournments. If more than one party requests the adjournment, the arbitrators shall allocate the \$100 per arbitrator fee among the requesting parties. The arbitrators may allocate all or a portion of the \$100 per arbitrator fee to the non-requesting party or parties, if the arbitrators determine that the non-requesting party or parties caused or contributed to the need for the adjournment. In the event that a request results in the adjournment of consecutively scheduled hearing sessions, the additional fee will be assessed only for the first of the consecutively scheduled hearing sessions. In the event that an extraordinary circumstance prevents a party or parties from making a timely adjournment request, arbitrators may use their discretion to waive the fee, provided verification of such circumstance is received.

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Rules of PCX Equities, Inc.

Rule 12 Arbitration

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Settlements

Rule 12.7(a) All settlements upon any matter submitted shall be at the election of the parties.

(b) If the parties agree to settle their dispute, they will remain responsible for payment of fees incurred, including fees for previously scheduled hearing sessions and fees incurred as a result of adjournments, pursuant to Rule 12.19(d).

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Adjournments

Rule 12.19(a) – (c) – No change.

(d) If an adjournment request is made by one or more parties and granted within three business days of a scheduled hearing session, not including prehearing sessions, the party or parties making the request shall pay an additional fee of \$100 per arbitrator to compensate the arbitrator for the inconvenience due to last minute adjournments. If more than one party requests the adjournment, the arbitrators shall allocate the \$100 per arbitrator fee among the requesting parties. The arbitrators may allocate all or a portion of the \$100 per arbitrator fee to the non-requesting party or parties, if the arbitrators determine that the non-requesting party or parties caused or contributed to the need for the adjournment. In the event that a request results in the adjournment of consecutively scheduled hearing sessions, the additional fee will be assessed only for the first of the consecutively scheduled hearing sessions. In the event that an extraordinary circumstance prevents a party or parties from making a timely adjournment request, arbitrators may use their discretion to waive the fee, provided verification of such circumstance is received.

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