



**RULE  
ADOPTION  
NOTICE**

**RAN-05-43  
June 3, 2005**

**TO: All OTP Holders and OTP Firms**

**FROM: Department of Regulatory Policy**

**SUBJECT: Prohibition on Borrowing and Lending  
(File No. SR-PCX-2005-33)**

On April 15, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange") proposed to adopt PCX 9.29, a new rule restricting registered persons of OTP Holders or OTP Firms from borrowing from or lending to their customers, except pursuant to the conditions specified in the rule.

The purpose of the proposed rule change is to adopt a rule that prohibits registered persons of an OTP Holder or OTP Firm from borrowing money from or lending money to a customer unless each of the following applies: (1) the OTP Holder or OTP Firm has written procedures allowing such borrowing or lending arrangements; and (2) the borrowing or lending arrangement falls within one of five permissible types of lending arrangements specified in the rule. In certain cases, the OTP Holder or OTP Firm must also pre-approve the loan in writing.

The Exchange filed Amendment No. 1 to the proposed rule on May 23, 2005. The proposed rule change was effective upon filing and the Commission released the notice of filing and immediate effectiveness on May 27, 2005.

The following is the text of the rule. Questions regarding this bulletin may be directed to Melanie Grace at (415) 393-4135.

**EXHIBIT 5**  
**Text of the Proposed Rule Change:**<sup>1</sup>  
**Rules of the Pacific Exchange, Inc.**

**Rule 9**

Rule 9.29. Borrowing From or Lending to Customers

(a) No person associated with an OTP Holder or OTP Firm in any registered capacity may borrow money from or lend money to any customer of such person unless:

(1) The OTP Holder or OTP Firm has written procedures allowing the borrowing and lending of money between such registered persons and customers of the OTP Holder or OTP Firm; and

(2) The lending or borrowing arrangement meets one of the following conditions:

(A) the customer is a member of such person's immediate family;

(B) the customer is a financial institution regularly engaged in the business of providing credit, financing, or loans, or other entity or person that regularly arranges or extends credit in the ordinary course of business;

(C) the customer and the registered person are both registered persons of the same OTP Holder or OTP Firm;

(D) the lending arrangement is based on a personal relationship with the customer, such that the loan would not have been solicited, offered, or given had the customer and the associated person not maintained a relationship outside of the broker/customer relationship; or

(E) the lending arrangement is based on a business relationship outside of the broker/customer relationship;

(b) Procedures.

(1) OTP Holders or OTP Firms must pre-approve in writing the lending or borrowing arrangements described in subparagraphs (a)(2)(C), (D), and (E) above.

(2) With respect to the lending or borrowing arrangements described in subparagraph (a)(2)(A) above, an OTP Holder's or OTP Firm's written procedures may

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<sup>1</sup> New text is underlined.

indicate that registered persons are not required to notify the OTP Holder or OTP Firm, or receive OTP Holder or OTP Firm approval either prior to or subsequent to entering into such lending or borrowing arrangements.

(3) With respect to the lending or borrowing arrangements described in subparagraph (a)(2)(B) above, an OTP Holder's or OTP Firm's written procedures may indicate that registered persons are not required to notify the OTP Holder or OTP Firm or receive their approval either prior to or subsequent to entering into such lending or borrowing arrangements, provided that the loan has been made on commercial terms that the customer generally makes available to members of the public similarly situated as to need, purpose, and creditworthiness. For purposes of this subparagraph, the OTP Holder or OTP Firm may rely on the registered person's representation that the terms of the loan meet the above-described standards.

(c) The term immediate family shall include parents, grandparents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and shall also include any other person whom the registered person supports, directly or indirectly, to a material extent.

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