



RULE
ADOPTION
NOTICE

RAN-03-23
September 18, 2003

**TO: PCX Members and Member Organizations
ETP Holders and Sponsored Participants**

FROM: Department of Regulatory Policy

**SUBJECT: Arbitration Program
(File No. SR-PCX-2003-34)**

On June 9, 2003, the Pacific Exchange, Inc., on its own behalf and through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE") filed with the Securities and Exchange Commission a proposal to amend the PCX and PCXE arbitration rules. Specifically, the proposed rule changes would require all parties to an arbitration filed pursuant to PCX or PCXE Rule 12 (other than those described below) to waive (1) the application of the California Rules of Court, Division VI of the Appendix, entitled "Ethics Standards of Neutral Arbitrations in Contractual Arbitration" (the "California Standards"), and (2) any claims against the PCX or PCXE that the conduct of the arbitration violates the California Code of Civil Procedure Section 1281.92 ("CCCP Claims"). However, the parties would not be required to waive the CCCP claims in arbitrations solely between or among members, member organizations and persons associated therewith (or, as the case may be, solely between ETP Holders and persons associated therewith) that do not involve consumer-related or employment-related claims.¹ Both waivers (where required) must be made without condition and in the form required by the PCX and PCXE. If any party to an arbitration fails to sign the required waivers, the PCX will decline jurisdiction over, dismiss and refund fees paid to PCX or PCXE by the parties for, that arbitration. Furthermore, it will be considered conduct inconsistent with just and equitable principles of trade for any member, member organization, ETP Holder or associated person therewith who is a party to a PCX or PCXE arbitration to fail to waive the California Standards and the CCCP Claims, where required.

On August 15, 2003, the Commission approved the PCX's proposed rule change. The following is the text of the rule change. Questions regarding this bulletin may be directed to Larry Hing at (415) 393-4151.

¹ PCX and PCXE believe that such arbitrations would not be considered "consumer arbitrations" as that term is used in the California Code of Civil Procedure.

EXHIBIT A
Text of the Rule Change:²

PCX Rule 12

Arbitration

Matters Subject to Arbitration

Rule 12.1(a) - (g) - No change.

Commentary:

.01 – No change.

.02 It may be deemed conduct inconsistent with just and equitable principles of trade for a member, a member organization or a person associated with a member or member organization to:

(a) – No change.

(b) fail to waive the California Rules of Court, Division VI of the Appendix, entitled “Ethics Standards for Neutral Arbitrators in Contractual Arbitration” (the “California Standards”), if the member, member organization or person associated with a member or member organization is a party to an arbitration filed pursuant to this Rule 12 [if all the parties in the case who are customers have waived application of the California Standards in that case; or to fail to waive the California Standards if all associated persons with a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute have waived application of the California Standards in that case];

(c) fail to waive any claims against the Exchange that the conduct of the arbitration violates the California Code of Civil Procedure Section 1281.92 (“CCCP Claims”), if the member, member organization or person associated with a member or member organization is a party to an arbitration filed pursuant to this Rule 12 (other than arbitrations solely between or among members, member organizations and/or persons associated with a member or member organization that do not involve consumer-related or employment-related claims) [if all the parties in the case who are customers have waived the CCCP Claims in that case; or to fail to waive the CCCP Claims if all associated persons with a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute have waived the CCCP Claims in that case];

² New text is underscored; deleted text is in brackets.

(d) – (e) – No change.

.03 – No change.

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[Applicability of Arbitration Rules] Waivers

Rule 12.35 [(a) Reserved.]

[(b) Arbitrations Filed Prior to May 1, 2003. Arbitration claims that were filed prior to May 1, 2003 and remain pending will be administered as follows:]

[(i) The arbitration] Arbitration claims will be administered in accordance with this Rule[s] 12[.1 through 12.34] only [if] :

[(A) arbitrator(s) have been appointed as of May 1, 2003; and]

[(B)] [a]All parties to the arbitration have waived, without condition and in the form required by the Exchange, the application of the California Standards and the CCCP Claims (as defined in Commentary .02 of Rule 12.1); provided, however, that the parties are not required to waive the CCCP claims in arbitrations solely between or among members, member organizations and/or persons associated with a member or member organization that do not involve consumer-related or employment-related claims. PCX will decline jurisdiction over, dismiss and refund fees paid to PCX by the parties for, any arbitration claims in which any of the parties to arbitration fail to sign both waivers, where required.

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PCXE Rule 12

Arbitration

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Rule 12.2(a) – (g) – No change.

(h) It may be deemed conduct inconsistent with just and equitable principles of trade for an ETP Holder or a person associated with an ETP Holder to:

(i) fail to submit to arbitration on demand under the provisions of this Rule[, or];

(ii) to fail to waive the California Rules of Court, Division VI of the Appendix, entitled “Ethics Standards for Neutral Arbitrators in Contractual Arbitration” (the “California Standards”), if the ETP Holder or person associated with an ETP Holder is a party to an arbitration filed pursuant to this Rule 12 [if all the parties in the case who are customers have waived application of the California Standards in that case; or to fail to waive the California Standards if all associated persons with a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute have waived application of the California Standards in that case]; [or]

(iii) fail to waive any claims against the PCXE that the conduct of the arbitration violates the California Code of Civil Procedure Section 1281.92 (“CCCP Claims”), if the ETP Holder or person associated with an ETP Holder is a party to an arbitration filed pursuant to this Rule 12 (other than arbitrations solely between or among ETP Holders and/or persons associated with an ETP Holder that do not involve consumer-related or employment-related claims);

(iv) to fail to appear or to provide any document in his or her or its possession or control as directed pursuant to the provisions of this Rule; or

(v) to fail to honor an award of arbitrators properly rendered pursuant to the provisions of this Rule where a timely motion has not been made to vacate or modify such award pursuant to applicable law.

(i) – (j) – No change.

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Waivers

Rule 12.35. Arbitration claims will be administered in accordance with this Rule 12 provided all parties to the arbitration have waived, without condition and in the form required by the PCXE, the application of the California Standards and the CCCP Claims (as defined in Rule 12.1(h)); provided, however, that the parties are not required to waive the CCCP claims in arbitrations solely between or among ETP Holders and/or persons associated with an ETP Holder that do not involve consumer-related or employment-related claims. PCXE will decline jurisdiction over, dismiss and refund fees paid to PCXE by the parties for, any arbitration claims in which any of the parties to arbitration fail to sign both waivers, where required.

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