



RULE
ADOPTION
NOTICE

RAN-04-39
September 8, 2004

TO: ETP Holders and Sponsored Participants

FROM: Department of Regulatory Policy

SUBJECT: PCX Equities, Inc.'s Ability to Waive an Examination Requirement for an ETP Applicant (File No. SR-PCX-2004-70)

On August 4, 2004, the Exchange filed a proposed rule change to amend PCXE Rule 2.4. This rule change would allow the Exchange to waive the examination requirement for an ETP applicant based upon the applicant's qualifications. The Commission approved the proposed rule filing on August 23, 2004.

The following is the text of the rule changes. Questions regarding this bulletin may be directed to Steven Matlin at (415) 393-4084.

EXHIBIT A

Text of the Proposed Rule Change:¹

Rules of PCX Equities, Inc.

Rule 2

Equity Trading Permits

DENIAL OF OR CONDITIONS TO ETPs

Rule 2.4(b) (1 – 9) – No change.

(10) does not successfully complete [such written proficiency] examinations as required by the Corporation to [enable it to examine and] verify the applicant's qualifications to function in [one or more of the] capacities covered by the application [applied for];

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

Series 7 Requirement

(A) Traders of ETP Holders for which the Corporation is the Designated Examining Authority ("DEA") must successfully complete the Series 7 Examination. [General Securities Registered Representative Examination (Test Series 7), if the primary business of the ETP Holder involves the trading of securities that is unrelated to the performance of the functions of a registered Market Maker. Unless required to complete the Series 7 under Rule 7.21(b)(2), the following are exempt from the requirement to successfully complete the Series 7 Examination:] ETP Holders [who are] performing the function of a registered Market Maker [(]pursuant to Rule 7.21(b)(2)[)] are exempt from this requirement.

For purposes of this Rule:

(i) The term "trader" means a person (a) who is directly or indirectly compensated by an ETP Holder, or who is any other associated person of an ETP Holder and (b) who trades, makes trading decisions with respect to, or otherwise engages in the proprietary or agency trading of securities. [; and

(ii) The term "primary business" means greater than 50% of the ETP Holder's business.

(B) Each ETP Holder for which the Corporation is the DEA must complete, on an annual basis, and on a form prescribed by the Corporation, a written attestation as to whether the ETP Holder's primary business is conducted in the performance of the function of a registered Market Maker (pursuant to Rule 7).]

[(C)] (B) The requirement to complete the Series 7 Examination will apply to current traders of ETP Holders that meet the criteria of subsection (A), above, as well as to future traders of ETP Holders that meet the criteria of subsection (A), above, at a later date. Traders of ETP Holders that meet the criteria of subsection (A), above, at the time of SEC approval of this Rule, must successfully complete the Series 7 Examination within six months of notification by the Corporation.

Rule 2.4(b) (11 –13) – No change.

(c) The Corporation may waive or modify a required examination for any Trader who has been a member of a self regulatory organization within six months of applying for trading privileges under an ETP if appropriate basis for an exemption from a required examination exists based on the following standards of evidence regarding an applicant's qualifications: [for any applicant if, within two years of the date of such applicant applied to the Corporation for an ETP, such applicant has successfully completed a comparable examination administered by a self-regulatory organization or the Securities and Exchange Commission.]

(1) length and quality of securities industry experience or professional experience in investment related fields;

(2) specific registration requested by the applicant and type of business to be conducted in relation to the applicant's experience;

(3) previous registration history with the Corporation and nature of any pre-existing regulatory matters; and

(4) other examinations (e.g. Series 1 Examination) taken by the applicant that may be acceptable substitutes in conjunction with securities industry experience.

Within fifteen calendar days after the Corporation reviews a request for a waiver of the examination requirement, the Corporation shall provide the applicant with a written determination of whether the waiver was granted or denied. If the Corporation denies the request for a waiver, the notice shall include a statement with the reasons for the denial. An applicant whose request for a waiver is denied may appeal the decision of the Corporation in accordance with the terms and conditions of Rule 10.13.

Rule 2.4(d – f) – No change.

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