



RULE  
ADOPTION  
NOTICE

**RAN-05-44**  
**June 3, 2005**

**TO: All ETP Holders**

**FROM: Department of Regulatory Policy**

**SUBJECT: Prohibition on Borrowing and Lending  
(File No. SR-PCX-2005-34)**

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

The purpose of the proposed rule is to adopt a rule that prohibits registered persons of an ETP Holder from borrowing money from or lending money to a customer unless each of the following applies: (1) the ETP Holder 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 ETP Holder 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>

**PCX Equities, Inc.**

**Rule 9**

Rule 9.29. Borrowing From or Lending to Customers

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

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

(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) ETP Holders 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 ETP Holder's written procedures may indicate that registered persons are not required to notify the ETP Holder, or receive ETP Holder

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<sup>1</sup>

New text is underlined.

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 ETP Holder's written procedures may indicate that registered persons are not required to notify the ETP Holder 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 ETP Holder 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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