

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49569; File No. SR-PCX-2004-26)

April 15, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. to Clarify the PCX General Membership Fees Portion of the PCX Schedule of Fees and Charges

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 6, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On April 14, 2004, the Exchange amended the proposed rule change.³ The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,⁴ and Rule 19b-4(f)(6)⁵ thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See April 13, 2004 letter from Tania J.C. Blanford, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, and attachments ("Amendment No. 1"). Amendment No. 1 completely replaced and superseded the original proposed rule change. In Amendment No. 1, the PCX asks the Commission to review the proposed rule change pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. The Commission considers the original proposed rule change to have satisfied the five-day pre-filing notice requirement under Rule 19b-4(f)(6). Additionally, for purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on April 14, 2004, the day the PCX filed Amendment No. 1. 17 CFR 240.19b-4(f)(6).

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to make clarifying changes to its Schedule of Fees and Charges ("Schedule"). The text of the proposed rule change is available at the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to make two clarifying amendments to the PCX General Membership Fees portion of its Schedule.

First, the Exchange wishes to make a clarifying change to the "Initial Membership Fee" portion of the Schedule. On December 12, 2003, the Exchange submitted a rule filing to amend PCX's membership-related fees portion of the Schedule, which became effective upon filing.⁶ In that filing (SR-PCX-2003-69), the Exchange proposed to

⁶ See Securities Exchange Act Release No. 48971 (Dec. 22, 2003), 68 FR 75307 (Dec. 30, 2003) (SR-PCX-2003-69).

amend the structure of its Initial Membership Fee and incorporate a flat fee of \$1,500 for all seat activations for all Member Organizations and Nominees.⁷ While the simplicity of the new fee structure has been successful, there has been some confusion as to the fee name. Currently, the fee is called “Initial Membership Fee,” which is a misnomer as the fee relates specifically to membership activations. Hence, the Exchange wishes to accurately reflect this fee as “Activation Fee.”

Second, the Exchange proposes to make clarifying amendments to the “Options Orientation Fee” portion of the Schedule. On September 29, 2003, the Exchange filed with the Commission a proposed rule change to amend the Options Orientation Fee, which became effective upon filing.⁸ In that filing (SR-PCX-2003-57), the Exchange restructured its Options Orientation Fee as the Exchange transitioned its orientation and testing process from a third party provider to the PCX and NASD. Thus, the restructured “Options Orientation Fee” is only intended to apply to applicants who are required to complete the PCX Orientation and Testing Program in order to satisfy applicable examination requirements set forth in PCX Rule 1.7. For these applicants, the investigation and fingerprinting fees are included as part of the Options Orientation Fee. Applicants who have otherwise satisfied applicable examination requirements of PCX Rule 1.7 (e.g., Series 7, Series 44, Series 45, etc.), and thus are not required to complete the PCX Orientation and Testing Program, are only assessed the \$125 investigation fee

⁷ The initial seat activation fee applies to each Member Organization as well as each Nominee to a Member Organization since activation for each Nominee requires a separate administrative process.

⁸ See Securities Exchange Act Release No. 48597 (Oct. 7, 2003), 68 FR 59439 (Oct. 15, 2003) (SR-PCX-2003-57).

and the \$35 fingerprinting fee. In other words, these applicants will not be assessed the \$1,000 Options Orientation Fee. There has been confusion among the Members as to whether the Options Orientation Fee is inclusive of the investigation and fingerprinting fees, and vice versa. Thus, the Exchange wishes to clarify the aforementioned fees by including the details stated above in the Schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)⁹ of the Act, in general, and furthers the objectives of Section 6(b)(5),¹⁰ in particular, because it is designed to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The PCX has asked the Commission to waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Such waiver will allow the clarification to be implemented immediately. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹³

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ For purposes only of eliminating the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2004-26 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-PCX-2004-26. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you

wish to make available publicly. All submissions should refer to File Number SR-PCX-2004-26 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).