

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50082; File No. SR-PCX-2004-68)

July 26, 2004

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Extension of a Linkage Fee Pilot Program

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 July 15, 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 July 21, 2004, the PCX filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposed rule change, as amended, on an accelerated basis.

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

The Exchange is proposing to amend its Schedule of Fees and Charges For Exchange Services to extend until July 31, 2005 the current pilot program regarding transaction fees charged for trades executed through the intermarket options linkage

¹ 15 U.S.C. 78s(b)(1).

² CFR 240.19b-4.

³ See letter from Steven B. Matlin, Senior Counsel, Regulatory Policy, PCX to Nancy Sanow, Assistant Director, Commission, dated July 20, 2004 (“Amendment No. 1”). In Amendment No. 1, the Exchange proposes to make technical corrections to the Schedule of Fees and Charges for Exchange Services, originally submitted as Exhibit A to the proposed rule change.

(“Linkage”). The text of the proposed fee schedule is available at the principal office of Exchange and at the Commission’s Public Reference Room.

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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization 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 purpose of this proposed rule change is to extend for one year the pilot program establishing PCX fees for Principal (“P”) Orders and Principal Acting as Agent (“P/A”) Orders executed through Linkage. The fees currently are effective for a pilot program set to expire on July 31, 2004, and this filing would extend the fees through July 31, 2005. The two fees the PCX charges for P and P/A Orders are: the \$.21 per contract side basic execution fees for trading on the PCX and a \$.05 comparison fee per contract side. These are the same fees that all PCX Option Trading Permit Holders pay for non-customer transactions executed on the Exchange. The Exchange does not charge for the execution of Satisfaction Orders sent through Linkage and is not proposing to charge for such orders.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,⁴ in general, and Section 6(b)(4),⁵ in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members and other persons using its facilities for the purpose of executing P and P/A Orders that are routed to the Exchange from other market centers.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. 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:

Electronic comments:

- Use the Commission's Internet comment form

(<http://www.sec.gov/rules/sro.shtml>); or

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2004-68 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-2004-68. 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 Section, 450 Fifth Street, NW, Washington, DC 20549. 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-2004-68 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange,⁶ and, in particular, with the requirements of Section 6(b) of the Act⁷ and the rules and regulations thereunder. The Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(4) of the Act,⁸ which requires that the rules of the Exchange provide for the equitable allocation or reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Linkage fee pilot until July 31, 2005 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁹ for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of the filing thereof in the Federal Register. The Commission believes that granting accelerated approval will preserve the Exchange's existing pilot program for Linkage fees without interruption as the PCX and the Commission further consider the appropriateness of Linkage fees.

⁶ In approving this rule, the Commission notes that it has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹⁰ that the proposed rule change, as amended, (SR-PCX-2004-68) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland
Deputy Secretary

¹⁰ Id.

¹¹ 17 CFR 200.30-3(a)(12).