

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-51243; File No. SR-PCX-2004-130)

February 23, 2005

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Fees for Late FOCD Forms

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 December 23, 2004, the Pacific Exchange, Inc. (“PCX” or “Exchange”), through its wholly owned subsidiary PCX Equities, Inc. (“PCXE”), filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The PCX has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the PCX under Section 19(b)(3)(A)(ii) of the Act,³ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The PCX proposes to amend the PCXE rules to adopt new fees for late Financial and Operational Compliance Department (“FOCD”) required forms. The text of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

proposed rule change is below. Proposed new language is in italics. Proposed deletions are in brackets.

Rules of the Pacific Exchange, Inc.

Rule 11

Business Conduct

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Prevention of the Misuse of Material, Nonpublic Information

Rule 11.3(a) Every OTP Holder or OTP Firm must establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of such OTP Holder or OTP Firm's business, to prevent the misuse of material, non-public information by such OTP Holder or OTP Firm or persons associated with such OTP Holder or OTP Firm. OTP Holders or OTP Firms for whom the Exchange is the Designated Examining Authority ("DEA") that are required, pursuant to Rule 4.5, to file SEC form X-17A-5, with the Exchange on an annual or more frequent basis must file contemporaneously with the submission for the calendar year end ITSFEA compliance acknowledgments stating that the procedures mandated by this Rule have been established, enforced and maintained. Any OTP Holder or OTP Firm or Associated Person who becomes aware of a possible misuse of material, non-public information must promptly notify the Exchange's Options Surveillance Department.

(b) Any OTP Holder or OTP Firm who fails to file a compliance acknowledgment form in a timely manner shall be subject to a late filing charge of \$500.00 for each occurrence. Repeated or aggravated failure to file may be referred to the Enforcement

Department for appropriate disciplinary action.

Commentary .01 - .03 – No change.

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Disclosure of Financial Arrangements of OTP Holders

Rule 11.11(a) – No change.

(b) OTP Holders and OTP Firms with financial arrangements must submit to the Exchange notification of the initiation, modification or termination of such financial arrangements in a form, time and manner approved by the Exchange within ten business days of the effective date of such arrangements or within such shorter period of time as the Exchange may require. Any OTP Holder or OTP Firm who fails to file as such in a timely manner shall be subject to a late filing charge of \$500.00 for each occurrence. Repeated or aggravated failure to file may be referred to the Enforcement Department for appropriate disciplinary action. [Failure to disclose the terms of such financial arrangements to the Exchange may result in disciplinary action.]

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Rules of PCX Equities, Inc.

Rule 6

Business Conduct

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Prevention of the Misuse of Material, Nonpublic Information

Rule 6.3(a) Every ETP Holder must establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of such ETP Holder's business, to prevent the misuse of material, non-public information by such ETP Holder or persons associated with such ETP Holder. ETP Holders for whom the Corporation is the Designated Examining Authority ("DEA") that are required, pursuant to Rule 4.5, to file SEC form X-17A-5, with the Corporation on an annual or more frequent basis must file contemporaneously with the submission for the calendar year end ITSFEA compliance acknowledgments stating that the procedures mandated by this Rule have been established, enforced and maintained. Any ETP Holder or Associated Persons who becomes aware of a possible misuse of material, non-public information must promptly notify the Corporation's Surveillance Department.

(b) Any ETP Holder who fails to file a compliance acknowledgment form in a timely manner shall be subject to a late filing charge of \$500.00 for each occurrence. Repeated or aggravated failure to file may be referred to the Enforcement Department for appropriate disciplinary action.

Commentary .01 - .03 – No change.

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Disclosure of Financial Arrangements

Rule 6.11(a) – No change.

(b) ETP Holders with financial arrangements must submit to the Corporation notification of the initiation, modification or termination of such financial arrangements in a form, time and manner approved by the Corporation within ten business days of the

effective date of such arrangements or within such shorter period of time as the Corporation may require. Any ETP Holder who fails to file as such in a timely manner shall be subject to a late filing charge of \$500.00 for each occurrence. Repeated or aggravated failure to file may be referred to the Enforcement Department for appropriate disciplinary action. [Failure to disclose the terms of such financial arrangements to the Corporation may result in disciplinary action.]

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 self-regulatory organization 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 IV 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

Purpose

The Exchange proposes to adopt fees for late filings of certain required FOCD forms. Options Trading Permit ("OTP") Holders and OTP Firms and Equities Trading Permit ("ETP") Holders (collectively, "Holders") are required to file a number of FOCD related forms in a timely manner. The Exchange believes that timely submission of FOCD forms is a serious matter and believes it is necessary to assess late fees to encourage Holders to file such forms in a timely manner.

The Exchange proposes to adopt late fees for the FOCD related forms described below.

1. Annual Compliance Acknowledgement Form

Under PCX Rule 11.3 and PCXE Rule 6.3, every Holder must establish, maintain, and enforce written policies and procedures to prevent the misuse of material, non-public information by the respective Holder or persons associated with such Holder. Holders for whom the Exchange is the Designated Examining Authority that are required, under PCX and PCXE Rule 4.5, to file SEC Form X-17A-5 with the Exchange on an annual basis must file contemporaneously with the submission for the calendar year end ITSFEA compliance acknowledgments stating that the procedures mandated by PCX Rule 11.3 or PCXE 6.3 have been established, enforced and maintained. The Exchange proposes to assess a late filing fee of \$500 for each occurrence to any Holder who fails to file the Annual Compliance Acknowledgement Form in a timely manner. Repeated or aggravated failure to file may be referred to the Enforcement Department for appropriate disciplinary action.

2. Financial Arrangement Disclosure Form

Under PCX Rule 11.11 and PCXE 6.11, Holders with financial arrangements are required to submit to the Exchange notification of the initiation, modification or termination of such financial arrangements in a form, time and manner approved by the Exchange within ten business days of the effective date of such arrangements. The Exchange proposes to assess a \$500 late fee to those Holders who fail to file the Financial Arrangement Disclosure Form in a timely manner. Repeated or aggravated failure to file may be referred to the Enforcement Department for appropriate disciplinary action.

Basis

The Exchange believes that the proposal is consistent with Section 6(b)⁴ of the Act, in general, and Section 6(b)(4)⁵ of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its OTP Holders, OTP Firms, ETP Holders, issuers, and other persons using its facilities.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii)⁶ of the Act and subparagraph (f)(2) of Act Rule 19b-4 thereunder,⁷ because it is concerned solely with the administration of the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission could have

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4(f)(2).

summarily abrogated such rule change if it appeared to the Commission that such action was necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.

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:

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-2004-130 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-2004-130. 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. 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 will also 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-2004-130 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.⁸

Margaret H. McFarland
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).

