

settlement of securities transactions and to assure the safeguarding of securities and funds that are in the custody or control of the clearing agency or for which it is responsible. The Commission finds that the proposed rule change is consistent with OCC's obligations under Section 17A(b)(3)(F) because it substantially clarifies the rights and responsibilities of OCC members that participate in the CMTA facility, which should help OCC promote the prompt and accurate clearance and settlement of securities transactions and also provide greater certainty and transparency over how CMTA transactions will be processed. In addition, increasing members' net capital and minimum clearing fund requirements should appropriately protect itself against the greater risk it faces as a result of its expansion of its CMTA services.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>13</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-2003-11) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49843; File No. SR-PCX-2004-50]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Extend a Temporary Waiver of Fees for Market Makers that Utilize More Than One Seat

June 10, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup>

notice is hereby given that on May 26, 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, II, and III below, which Items have been prepared by the Exchange. 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,<sup>3</sup> 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 Market Maker Fee portion of its Schedule of Fees and Charges ("Schedule") in order to extend a temporary waiver of the fee for those market makers that utilize more than one seat. 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 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 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

###### Purpose

The purpose of this proposed rule change is to extend for an additional month the temporary waiver of the Market Maker Fee for those market makers that utilize more than one seat. The Exchange proposes to extend the temporary waiver of the Market Maker Fee for those market makers that utilize more than one seat.<sup>4</sup>

Under the current Schedule, all market makers are assessed a fee of

\$1,750 per month for each seat that such market maker holds a primary appointment. PCX Rule 6.35(g)(2) permits market makers to increase the number of issues within their primary appointments depending on the number of seats that the market maker holds. The PCX believes a market maker would benefit from additional issues as a result of holding multiple seats.

The Exchange proposes to extend the temporary waiver of the \$1,750 Market Maker Fee for all market makers for each additional seat (for which the market maker holds a primary appointment) beyond the first seat held by such market maker. In other words, a market maker will only be assessed one Market Maker Fee of \$1,750 per month whether the market maker utilizes one seat or multiple seats. The PCX believes that a temporary waiver of the Market Maker Fee in this limited circumstance is appropriate to encourage participation by a larger number of market makers on PCX Plus.<sup>5</sup> As PCX Plus continues to expand, the PCX believes that this temporary waiver will provide market makers with an incentive to take on a larger number of issues without incurring additional Market Maker Fees. Therefore, the PCX believes that the added participation will result in increased liquidity, which, in turn, will further competition. This waiver will remain in effect until June 30, 2004, or such earlier date as determined by the Exchange.

###### Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,<sup>6</sup> in general, and section 6(b)(4) of the Act,<sup>7</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

##### 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.

<sup>5</sup> The temporary waiver of the Market Maker Fee only applies to market makers on PCX Plus, because only remote market makers on PCX Plus utilize multiple seats. See PCX Rule 6.35(g)(2). PCX represents that this waiver has no negative impact upon floor-based operations. Telephone conversation between Tania Blanford and Steven Matlin, Regulatory Policy, PCX, and Frank N. Genco, Attorney, Division of Market Regulation, Commission, on June 8, 2004.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> See Securities Exchange Act Release Nos. 49207 (February 6, 2004), 69 FR 7277 (February 13, 2004) (File No. SR-PCX-2004-04); and 49631 (April 29, 2004), 69 FR 25162 (May 5, 2004) (File No. SR-PCX-2004-35).

<sup>13</sup> 15 U.S.C. 78q-1.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

*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) of the Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4<sup>9</sup> thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such 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.

**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](mailto:rule-comments@sec.gov). Please include File Number SR-PCX-2004-50 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-2004-50. 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 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-2004-50 and should be submitted on or before July 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-49828; File No. SR-PCX-2004-51]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Amending the Designated Options Examination Authority Fee on a Retroactive Basis**

June 8, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 1, 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, II, and III below, which Items have been prepared by the Exchange. 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 Exchange is proposing to amend its Schedule of Fees and Charges by changing the Designated Options Examination Authority ("DOEA") fee

charged to its members, effective retroactively as of January 2004.<sup>3</sup> The text of the proposed rule change is available at the Commission and the PCX.

**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 IV below. The Exchange 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 proposes to amend its Schedule of Fees and Charges to retroactively establish the DOEA fee that recently became effective pursuant to a previous PCX proposed rule change.<sup>4</sup> Previously, the Exchange assessed a \$2000/month DOEA fee in order to recover the Exchange's costs of DOEA examinations for which it would be responsible.<sup>5</sup> At the time the Exchange set the original DOEA fee, it contemplated it would conduct some examinations itself and would contract with the NASD to conduct other examinations. For that reason, the Exchange adopted a flat fee of \$2000/month based upon the preexisting \$2000/month Designated Examination Authority ("DEA") fee. The Exchange anticipated that the costs of the examinations, whether conducted by the NASD or by the Exchange, would be about the same as the costs of the DEA examinations.

The Exchange has relied exclusively on the NASD to conduct its DOEA examinations and as a result, amended its Schedule of Fees and Charges to change its DOEA fee from \$2000/month

<sup>3</sup> On April 15, 2004, the Exchange filed an identical amendment to its Schedule of Fees and Charges, as immediately effective. See Securities Exchange Act Release No. 49671 (May 7, 2004), 69 FR 27665 (May 17, 2004) (File No. SR-PCX 2004-32). Because the Exchange also seeks to apply the amendment to the DOEA fee on a retroactive basis, the Exchange is submitting this proposal for notice and comment.

<sup>4</sup> *Id.*

<sup>5</sup> See Securities Exchange Act Release No. 47577 (March 26, 2003), 68 FR 16109 (April 2, 2003) (File No. SR-PCX 2003-03).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.