

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

The foregoing rule change, which establishes or changes a due, fee or other charge imposed by the Exchange, has become effective pursuant to section 19(b)(3) of the Act<sup>7</sup> and rule 19b-4(f)(2)<sup>8</sup> thereunder. 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-ISE-2003-13 and should be submitted by April 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47560; File No. SR-PCX-2003-08]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges

March 21, 2003.

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 March 11, 2003, 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. On March 21, 2003, PCX submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this 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

PCX proposes to amend its Schedule of Fees and Charges For Exchange Services in order to state that executions resulting from orders routed to the Exchange through the options intermarket linkage ("Linkage Orders"), other than satisfaction orders, will be subject to the same billing treatment as other fees related to broker-dealer executions. The Exchange intends to implement this fee on a one-year pilot basis retroactive to January 31, 2003. The text of the proposed fee schedule is below. Proposed language is italicized; deleted language is in brackets.

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## SCHEDULE OF FEES AND CHARGES FOR EXCHANGE SERVICES

### PCX Options: Trade-Related Charges

#### Transactions:

Customer .....	\$0.00 per contract side
[PCX] Market Maker .....	\$0.21 per contract side
Firm .....	\$0.10 per contract side for customer facilitation
Broker/Dealer .....	\$0.21 per contract side

Ticket Data Entry .....

	\$0.25 per firm trade
	\$0.50 per market maker trade

On-Line Comparison .....

	\$0.05 per contract for firm, broker/dealer, and market maker executions
	No on-line comparison charge is assessed on customer executions.

Broker Dealer Auto-Ex Surcharge .....

	\$0.20 per contract
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Linkage Fees<sup>1</sup> .....

	<i>\$0.21 per transaction per contract side</i>
	<i>\$0.05 comparison fee</i>

Order Cancellation .....

	\$1.00 per MFI order canceled [1] <sup>2</sup>
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Only applies to orders cancelled through the MFI in any month where the total number of orders cancelled through the MFI exceeds the total number of orders that same firm executed through the MFI in that same month.

#### Volume Discount Program

449,000 or lower .....	No reduction
450,000 to 474,999 .....	\$0.01
475,000 to 499,999 .....	\$0.02
500,000 to 524,999 .....	\$0.03
525,000 or higher .....	\$0.04

Marketing Charge .....

	Rates Variable—See separate schedule
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Cap on Marketing Charge .....

	\$200 per trade
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<sup>1</sup> Executions resulting from Linkage Orders, other than satisfaction orders, will be subject to this fee. This fee is applicable through an Exchange Pilot Program and will expire on January 31, 2004.

[1]<sup>2</sup> Only applies to orders cancelled through the MFI in any month where the total number of orders cancelled through the MFI exceeds the total number of orders that same firm executed through the MFI in that same month.

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 19b-4(f)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 217 CFR 240.19b-4.

<sup>3</sup> See letter from Mai Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated March 18, 2003 ("Amendment No. 1"). In Amendment No. 1, PCX added a statement to footnote number one of its Schedule

of Fees and Charges for Exchange Services limiting the revised linkage fees to a one-year pilot program ending January 31, 2004; and to change the name of the transaction fee from "PCX Market Maker" to "Market Maker."

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## 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. 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

On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an options intermarket linkage ("Linkage Plan" or "Plan")<sup>4</sup> which linkage now includes participation by the five option exchanges ("Participant Exchanges")<sup>5</sup> The Exchange proposed to adopt new rules relating to the operation of the options intermarket linkage on September 26, 2002 and filed an amendment to the proposal on January 30, 2003. The Commission approved the PCX's proposed rules on January 31, 2003.<sup>6</sup> Along with all of the Participant Exchanges, the Exchange launched Phase I of the options intermarket linkage on January 31, 2003.

In connection with the launch of the options intermarket linkage, the Exchange seeks to include in its Schedule of Fees and Charges For Exchange Services a provision that applies to linkage fees stating that executions resulting from Linkage Orders will be subject to the same billing treatment as other broker-dealer executions. Accordingly, with respect to either a Principal Acting as Agent ("P/A") Linkage Order or a Principal Linkage Order that is routed to the Exchange from other market centers, existing transaction fees and on-line comparison fees will apply equally to such Linkage Orders. This proposal specifies that existing PCX fees will not apply to Satisfaction Orders (which

result after a trade-through<sup>7</sup>). The Exchange proposes these linkage fees as a pilot that will be effective for one year from January 31, 2003 until January 31, 2004.

The Exchange also seeks to make a conforming change to its Schedule of Fees and Charges in order to change the name of the transaction fee from "PCX Market Maker" to "Market Maker." The Exchange represents that it previously sought to make a distinction between PCX Market Maker fees and non-PCX Market Maker fees. After further consideration, the Exchange chose to abandon any distinction and removed the non-PCX Market Maker item from its proposal. In doing so, it did not eliminate the term "PCX" from the Market Maker transaction fees as it should have and seeks to do so here.

The Exchange does not seek to make any other changes to its Schedule of Fees and Charges.

#### 2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,<sup>8</sup> in general, and section 6(b)(4),<sup>9</sup> 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/A Linkage Orders or Principal Linkage 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

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

(ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange requests that the Commission allow the Exchange to apply the rate retroactively as of January 31, 2003, the effective date of permanent linkage.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amended proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 submissions should refer to File No. SR-PCX-2003-08 and should be submitted by April 18, 2003.

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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## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3481, Amdt. 1]

#### State of Ohio

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective March 18, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on February 14,

<sup>4</sup> See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

<sup>5</sup> See Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000); 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); and 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000).

<sup>6</sup> See Securities Exchange Act Release No. 47295, 68 FR 6242 (February 6, 2003).

<sup>7</sup> Trade-throughs occur when broker-dealers execute customer orders on one exchange at prices inferior to another exchange's disseminated quote.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

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