

received. For the reasons discussed below, the Commission is now granting approval of the proposed rule change.

### I. Description

The purpose of this filing is to allow DTC to modify its procedures relating to how deliveries are processed in DTC's Money Market Instrument ("MMI") Program. Under DTC's current procedures applicable to MMI transactions, early on the maturity date (generally around 2 a.m.)<sup>3</sup> DTC initiates deliveries of maturing paper from the accounts of participants having position in the maturing paper to the MMI participant account of the Issuing/Paying Agent ("IPA"). These transactions are processed as the equivalent of valued delivery orders ("DO"). The IPA can "refuse to pay" for maturing paper of a particular issuer by communicating that intention to DTC before 3 p.m. on the maturity date. DTC will inform all participants of the IPA's refusal to pay by broadcast message. DTC will then, among other things, reverse any completed maturity presentments by recrediting them to presenting participants.

The MMI procedures also provide for participants that are receivers of new MMI issuance DOs (e.g., custodian banks) to have until 3:30 p.m. to reclaim those DOs back to the IPA.<sup>4</sup> Since the reclaim can be "matched" with a DO processed on the same day, the reclaim is permitted to bypass the Receiver Authorized Delivery ("RAD") system and DTC's risk management controls (e.g., net debit cap and collateral monitor) if the value of the DO is less than \$15 million.<sup>5</sup>

Although the current procedures have worked well, since the events of September 11, 2001, participants in DTC's MMI program have been working with DTC on changes that would reduce risk without introducing processing inefficiencies. IPAs have raised concerns about potentially having to fund an issuer's maturity at a level higher than anticipated at the time IPA decides not to exercise a "refusal to pay" because the IPA fails to receive the settlement credits associated with new issuance DOs that are reclaimed after 3 p.m. As a result, IPAs are forced to make

"refusal to pay" decisions based on incomplete data and are subject to increased exposure to individual issuers.

The rule change addresses these concerns by subjecting reclamations of all new MMI issuance DOs received after 2:30 p.m. to RAD controls and treating them as original transactions subject to DTC's normal risk management controls.<sup>6</sup> To reduce the potential impact of the change in the processing of reclaims received after 2:30 p.m., the rule change provides receivers of new issuance DOs with the option of having those deliveries made subject to RAD at 2 p.m. thereby giving these participants electing this option one-half hour to consider whether to accept or reject the new issuance DOs.<sup>7</sup> While the cutoff for the Issuing/Paying agent ("IPA") to exercise its "refusal to pay" option will remain at 3 p.m., the rule change clarifies that since under certain circumstances DTC may extend the 2 p.m. and 2:30 p.m. cutoffs referred to above, DTC may also extend the 3 p.m. cutoff.

### II. Discussion

Section 17A(b)(3)(F)<sup>8</sup> of the Act requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions. By moving up the cutoff for reclamations for new MMI issuance DOs, DTC's proposed rule change will enable IPAs to make more informed decisions on whether to provide credit for a particular issuer and therefore to better manage their intraday risk and liquidity exposures. As such, the proposed rule change is consistent with DTC's statutory obligation to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions.

<sup>6</sup> As a result, reclamations made after 2:30 p.m. will not be eligible for processing during the exclusive reclaim period (3:20 pm. to 3:30 p.m.) and may not be "re-reclaimed" by the receiver.

<sup>7</sup> All new issuance DOs processed after 2:00 p.m. will automatically be subject to RAD unless the participant instructs DTC to the contrary. DTC participants may opt-out of forced RAD by completing the "Forced MMI RAD Election Form" and submitting it to their DTC relationship manager. The election form is available on DTC's website ([www.dtc.org](http://www.dtc.org)) as Attachment A to DTC Important Notice #5337. A participant that, at first, elected to opt out of the forced RAD functionality may opt back in by submitting a new completed election form to its DTC relationship manager.

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F).

### III. 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 Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (File No. SR-DTC-2004-03) be and hereby is approved.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50004; File No. SR-PCX-2004-53]

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

July 12, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on June 14, 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 PCX. On June 30, 2004, PCX filed 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.

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

<sup>3</sup> See letter from Steven B. Matlin, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 29, 2004 ("Amendment No. 1"). In Amendment No. 1, PCX amended its Schedule of Fees and Charges for Exchange Services to replace a reference to the term "Order Service Firm" with "any OTP Holder or OTP Firm that has activated their OTP for trading or clearing purposes" and to make a conforming change to a related footnote. PCX also made technical corrections to the proposed rule text. Amendment No. 1 supercedes and replaces the proposed rule change in its entirety.

<sup>3</sup> All times are Eastern Standard Time.

<sup>4</sup> Reclaims, or reclamations, are the means by which receivers can return erroneous deliveries.

<sup>5</sup> RAD is a control mechanism that allows participants to review transactions prior to completion of processing in order to limit participants' exposure from misdirected or erroneously entered DOs. The bypassing of DTC's risk management controls is designed to address industry concern that the receiver not be "stuck" with a delivery it should not have received because of DTC's risk management controls.

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

PCX is proposing to amend its Schedule of Fees and Charges for Exchange Services in order to adopt fees and charges that are applicable to the services provided by PCX under its new demutualized structure. The text of the proposed rule change is available at 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, 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. PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts 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 adopt fees and charges that are applicable to the services provided by the Exchange under its new demutualized structure. Under the demutualized structure, the Exchange will no longer have seats. The former seatholders of the Exchange became holders of option trading permits ("OTPs") and stockholders in PCX's new parent company. As such, the Exchange has removed all references to "seats," "members," and "member organizations" on its Schedule of Fees and Charges for Exchange Services and replaced them with "OTPs," "OTP Holders," "OTP Firms" and made other revisions to conform to the demutualized structure. The Exchange represents that it is not creating any additional fees under the proposed rule change.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>5</sup> in particular, in that the proposed rule change 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.

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

Written comments were neither solicited nor received with respect to the proposed rule change.

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>6</sup> and subparagraph (f)(2) of Rule 19b-4<sup>7</sup> thereunder, because the proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of June 30, 2004, the Commission may summarily abrogate such proposed 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.<sup>8</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2004-53 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission,

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

<sup>8</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C), the Commission considers that period to commence on June 30, 2004, the date PCX filed Amendment No. 1 to the proposed rule change.

450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-PCX-2004-53. 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-2004-53 and should be submitted on or before August 9, 2004.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**AGENCY:** Small Business Administration.

**ACTION:** Notice of reporting requirements submitted for OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

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

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

<sup>5</sup> 15 U.S.C. 78f(b)(4).