

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-51369; File No. SR-PCX-2005-14)**

**March 15, 2005**

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Pacific Exchange, Inc. Relating to Arbitration Fees**

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 February 1, 2005, the Pacific Exchange, Inc. (“PCX” or “Exchange”) 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 Exchange. On February 23, 2005, the Exchange filed Amendment No. 1 to the proposed rule change. On March 8, 2005, the Exchange filed Amendment No. 2 to the proposed rule change. 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 is proposing to amend the PCX Options and PCX Equities, Inc. (“PCXE”) arbitration rules to include an arbitration hearing venue surcharge applicable to OTP Holders, OTP Firms<sup>4</sup> and ETP Holders<sup>5</sup> (“Holders”). The text of the proposed rule change is available on

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

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

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

<sup>4</sup> See PCX Rule 1(q)-(r).

<sup>5</sup> See PCXE Rule 1(n).

the PCX Web site (<http://www.pacificex.com/legal/docs/prf/2005/SR-PCX-2005-14-amend2.pdf>), at the principal office of the PCX, and in 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. 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

Purpose

The Exchange proposes to adopt new PCX Rule 12.31(l) and PCXE Rule 12.32(l) to include an arbitration hearing venue surcharge applicable to Holders. Under the proposed rules, the Director of Arbitration ("Director") will make arrangements with an off-site venue for each arbitration hearing and the costs for such arrangement will be directly passed to the Holder(s) that are parties to the dispute ("Arbitrating Holders"). The Arbitrating Holder(s) will be liable for the entire amount of the arrangement for the arbitration hearing venue. For each associated person who is named, the surcharge shall be assessed against the Holder which employed the associated person at the time of the events which gave rise to the dispute, claim or controversy. In the event that multiple Arbitrating Holders or associated persons are parties to a dispute, the arbitrator(s) shall determine which Arbitrating Holders will be liable for the surcharge unless the surcharge is waived by the Director.

Currently, arbitration hearings at the PCX are held in conference rooms within the PCX corporate headquarters. These conference rooms are shared by various PCX departments and are located on the same floors as the departments, which include the Membership, Regulation, General Counsel, and Enforcement departments. Due to the sharing of space and close quarters in which the arbitration hearings are held, the parties to the dispute often do not have alternate locations to discuss matters with their counsel and/or discuss possible settlements or resolutions. Furthermore, the level of confidentiality and integrity of the Exchange may be in jeopardy with various unattended parties in the hallways of the PCX corporate headquarters. Therefore, the Exchange believes an off-site hearing venue, which would provide an appropriate and confidential environment for the arbitration parties, would be in the best interest of the arbitration parties as well as the Exchange.

#### Basis

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

#### 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.

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

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

### 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)<sup>8</sup> of the Act and subparagraph (f) of Rule 19b-4 thereunder,<sup>9</sup> because the proposed rule change establishes a charge applicable only to members of 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 purpose of the Act.<sup>10</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 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 No. SR-PCX-2005-14 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 No. SR-PCX-2005-14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments

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

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

<sup>10</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, the Commission considers that period to commence on March 8, 2005, the date on which the Exchange filed Amendment No. 2 to the proposed rule change. See 15 U.S.C. 78s(b)(3)(C).

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 Room, 450 Fifth Street, NW, Washington, DC 20549-0609. 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 No. SR-PCX-2005-14 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.<sup>11</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).