

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51795; File No. SR-PCX-2005-67)

June 7, 2005

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Exchange Fees and Charges

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 May 6, 2005, 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 PCX. 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, through its wholly-owned subsidiary PCX Equities, Inc. (“PCXE”), proposes to amend its Schedule of Fees and Charges in order to modify the list of eligible strategies that apply to Option Strategy Executions retroactive to January 1, 2005. The text of the proposed rule change is available on the PCX’s Web site (<http://www.pacificex.com>), at the PCX’s Office of the Secretary, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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. 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

1. Purpose

In a separate rule filing, SR-PCX-2005-65,³ the PCX proposed to modify the list of strategies presently included in the fee that applies to Option Strategy Executions to add two strategies: (1) short interest spreads and (2) merger spreads. That rule filing is prospective. The purpose of this rule filing is to make one of these same changes retroactive to January 1, 2005.

In SR-PCX-2005-65, the PCX added to its strategy fee cap a strategy used to capture short stock interest. The "short stock interest spread" is defined as a spread that uses two deep in the money put options followed by the exercise of the resulting long position of the same class in order to establish a short stock interest arbitrage position.⁴

Because the short stock interest spread transactions are generally executed by professionals whose profit margins are generally narrow, the Exchange proposes to cap the transaction fees associated with such executions at \$1,000 per strategy execution with a monthly

³ See Securities Exchange Act Release No. 51787 (June 6, 2005).

⁴ In SR-PCX-2005-65, the PCX also added merger spreads to the strategy fee cap rule, but PCX is not seeking to make that change retroactive and so merger spreads are not a part of this filing.

cap of \$50,000 per initiating firm.

The PCX seeks to make this fee change retroactive because short stock interest spreads have been executed by customers of the PCX with the understanding, based on conversations with Exchange staff, that these strategies were included in a group of strategies that already qualified for reduced rates and fees under the previously approved Option Strategy Execution rate plan. The PCX is applying to make this fee change retroactive to January 1, 2005 so that the Exchange may make adjustments to the accounts of all customers that may have executed short interest spreads from that date forward based on their understanding that the fees for such transactions were capped. The Exchange believes that by retroactively lowering these fees, the Exchange will not only be correcting customers accounts for previously executed trades but will be able to continue to attract liquidity by accommodating these transactions.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁶ in particular, in that it provides for the equitable allocation of 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.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(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

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 Exchange consents, the Commission will:

- A. by order approve such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

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-2005-67 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-0609.

All submissions should refer to File Number SR-PCX-2005-67. 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, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-0609. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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-2005-67 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.⁷

Margaret H. McFarland
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).