

the funds available to LMMs for their use in attracting orders in the options traded at the posts. The PCX charges the marketing fees as set forth in the Schedule of Rates. The PCX's marketing fee program applies only to option issues classified by the PCX as the Top 250 issues. The PCX defines a Top 250 issue as one of the 250 most actively traded option issues on a national basis. For each current month, the PCX's determination of whether an equity option ranks in the top 250 most active issues will be based on volume statistics for the three calendar months of trading activity beginning four months prior to the current month.

The PCX is proposing to change the marketing fee for certain options as set forth in the Schedule of Rates beginning at the commencement of the June trade month and continuing until further notice. The PCX proposes to change only the amounts of the fees that it charges for transactions in the options that are included in the proposed Schedule of Rates. Any fees currently being charged for transactions in options that are not listed in this amendment to the Schedule of Rates would not be affected by the proposed rule change. The PCX believes that its proposed rule change is reasonable and equitable because it is designed to enable the PCX to compete with other markets in attracting options business. Only the amount of the fee is being changed.

Basis

The PCX believes that the proposal is consistent with section 6(b) of the Act⁴ and section 6(b)(4) of the Act⁵ in particular in that it provides for the equitable allocation of reasonable fees among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX 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

The PCX neither solicited nor received written comments on the proposed rule change.

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 Act⁶ and Rule 19b-4(f)(2) thereunder⁷ because it changes the PCX fee schedule. At any time within 60 days after the filing of this proposed rule change, the Commission may summarily abrogate the 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 Room. Copies of the 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-2003-26 and should be submitted by July 14, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48031; File No. SR-PCX-2003-25]

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

June 13, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, notice is hereby given that on May 30, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 PCX is proposing to amend its Schedule of Fees and Charges by modifying its Order Cancellation Fees. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

Schedule of Fees and Charges for Exchange Services

PCX OPTIONS: TRADE-RELATED CHARGES

Transactions: No change.

Order Cancellation: \$1.00 per MFI order canceled.

Except as provided herein, the fee [O]only applies to orders canceled through the MFI in any month where the total number of orders canceled through the MFI by the executing Clearing Member exceeds the total number of orders that same firm executed through the MFI in that same month. This fee does not apply to executing Clearing Members canceling less than 500 orders through the MFI in a month. The MFI fee will also not apply to cancel requests on invalid orders (the option has already expired and the Exchange has purged it from its system); invalid symbols (a symbol that does not refer to a valid option traded on the Exchange); or invalid series (a series that is not recognized by or traded on the Exchange).

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4(f)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

Ticket Data Entry: No change.
 On-Line Comparison: No change.
 LMM Book Operation Credit: No
 change.

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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 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 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 has established an Order Cancellation Fee in order to address operational problems and costs resulting from the practice of market participants canceling orders immediately after they place such orders through the Exchange's Member Firm Interface ("MFI").³ While the fee was intended to temper activity among trading participants who immediately cancel orders without routing significant order flow to the Exchange, it was not intended to penalize Member Firms that, due to their systems formulas, must cancel orders that are deemed invalid and which they are not able to fill. Thus, if a Member Firm sends in an order that is not eligible for execution because it is an invalid order (the option has already expired and the Exchange has purged it from its system); has an invalid symbol (a symbol that does not refer to a valid option traded on the Exchange); or refers to an invalid series (a series that is not recognized or traded by the Exchange); such order will be rejected from the Exchange's system and the Member Firm will have to enter a cancel request in order to remove the ineligible order from its internal systems. These types of cancels are not the type of cancels that the Exchange's MFI Cancellation Fee was intended to, or should, redress. In order to ensure that this fee continues to mitigate excessive cancellations while not disadvantaging Member Firms that provide cancel requests for ineligible

orders, the Exchange proposes to modify its MFI cancellation selection criteria to exclude cancels on invalid orders, invalid series or invalid symbols from the applicability of the MFI Cancellation Fee. The Exchange believes that this proposed modification to its Schedule of Fees continues to fulfill the stated purpose of the MFI Cancellation Fee.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,⁴ in general, and section 6(b)(4) of the Act,⁵ in particular, in that it provides for the equitable allocation of reasonable fees 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 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 Act⁶ and subparagraph (f)(2) of Rule 19b-4⁷ thereunder because it changes a fee imposed by the PCX. 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.⁸

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 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-2003-25 and should be submitted by July 14, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
 Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48043; File No. SR-PCX-2003-15]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to its Auto-Ex Book Function Pilot Program

June 17, 2003.

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 21, 2003, 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 and II below, which Items have been prepared by the Exchange. On June 6, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Tania J. Cho, Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 5, 2003 ("Amendment No. 1"). In Amendment No. 1, PCX amended its proposal to request an extension of the pilot program discussed herein until June 30, 2004, rather than June 24, 2004 as stated in the original proposal, so that the pilot's expiration will coincide with the date on which the Exchange's "PCX Plus" system will be completely operative. See *infra* n. 6, and accompanying text.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4(f)(2).

⁸ See 15 U.S.C. 78(b)(3)(C).

³ See Securities Act Release No. 45262 (January 9, 2002), 67 FR 2266 (January 16, 2002) (SR-PCX-2001-47).