

qualified audit opinion on its annual audit.) In order to protect NSCC and its other members, it is important that credit risk staff maintain the discretion to downgrade a member's rating on the Matrix and thus subject the member to closer monitoring and possibly additional reporting and/or additional clearing fund requirements. All rated members, including those on the watch list, are monitored monthly or quarterly, depending upon the member's financial filing frequency, against basic minimum financial requirements and other parameters.

All broker-dealer members included on the watch list are monitored more closely. This means that they are also monitored for various parameter breaks which may include but are not limited to such things as a defined decline in excess net capital over a one month or three month period, a defined period loss, a defined aggregate indebtedness/net capital ratio, a defined net capital/aggregate debit items ratio, and a defined net capital/regulatory net capital ratio. All bank members included on the watch list are also monitored more closely for watch list parameter breaks which may include but are not limited to such things as a defined quarter loss, a defined decline in equity, a defined tier one leverage ratio, a defined tier one risk-based capital ratio, and a defined total risk-based capital ratio. Monitoring for the above more stringent parameter breaks is done only for those members placed on the watch list.

NSCC will continually evaluate the methodology and its effectiveness and will make such changes as it deems prudent and practicable within such time frame as is determined to be appropriate by NSCC. NSCC will update the Commission staff on its evaluations of the Matrix pursuant to a schedule developed by FICC, NSCC, and Commission staff.

B. Questionnaire

Currently, Addendums B, I, Q, and R (standards of financial responsibility and operational capability for settling, fund, insurance carrier, and third party administrator members and applicants, respectively) include questionnaires that members and applicants are currently required to complete and to return to NSCC. NSCC Rule 15 also provides that NSCC has the authority to examine and to require adequate assurance of the financial responsibility and operational capability of members and applicants. Because NSCC routinely receives information related to its members' and applicants' financial responsibility and operational capability

and has the authority to request additional information as the need arises, NSCC is eliminating these questionnaires from its Rules and Procedures. Furthermore, NSCC has found the information contained in the questionnaires to be duplicative of the other information it routinely receives throughout the year.

NSCC has determined to rely on its ability under Rule 15, Section 2 to obtain pertinent information for members and applicants rather than require responses to specific questionnaires. NSCC will solicit such information in such form and within such timeframes as it may require from time to time.

III. Discussion

Section 17A(b)(3)(F) of the Act requires among other things that the rules of a clearing agency be designed to facilitate the safeguarding of securities and funds which are in its custody or control or for which it is responsible and in general will protect investors and the public interest.⁴ The Commission finds that NSCC's proposed rule change is consistent with this requirement because it improves NSCC's member surveillance process which should better enable NSCC to safeguard the securities and funds which are in its custody or control or for which it is responsible.

IV. 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,⁵ that the proposed rule change (File No. SR-NSCC-2003-11) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Jill M. Peterson,

Assistant Secretary.

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⁴ 15 U.S.C. 78q-1(b)(3)(F).

⁵ 15 U.S.C. 78s(b)(2).

⁶ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51369; File No. SR-PCX-2005-14]

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

March 15, 2005.

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 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,³ 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 Firms⁴ and ETP Holders⁵ ("Holders"). The text of the proposed rule change is available on 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ See PCX Rule 1(q)-(r).

⁵ See PCXE Rule 1(n).

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(I) and PCXE Rule 12.32(I) 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)⁶ of the Act, in general, and section 6(b)(4)⁷ 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.

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)⁸ of the Act and subparagraph (f) of Rule 19b-4 thereunder,⁹ 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.¹⁰

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.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f).

¹⁰ 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).

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 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 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 April 11, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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¹¹ 17 CFR 200.30-3(a)(12).