

transactions are associated with particular deliveries;<sup>4</sup> and

(4) Controls permitting the retention of failed deliveries for the following settlement day that eliminates participants' need to reinput failed delivery instructions.

Using IMS, a participant can choose to authorize its deliveries either actively or passively. In the active mode, deliveries will not be processed unless an authorization is sent. In the passive mode, deliveries will be immediately authorized upon receipt. Authorizations and exemptions can be on a trade-for-trade basis or a global basis.

To provide flexibility and options, a participant will be able to create authorization profiles for the following asset classes: equity, municipal debt, corporate debt, and money market instruments. Within each asset class, a participant will be able to choose either the active or passive authorization mode as the default for different transaction types.<sup>5</sup> For example, for the asset class equities, a participant could choose to use active mode authorization for matched institutional deliveries and passive mode authorization for CNS deliveries.

All IMS features will be optional. Participants can continue to process their deliveries as they do today if they so wish. Participants will be able to migrate to any or all of the IMS features that they deem valuable. As a result of IMS, participants will be able to centrally manage their own settlements and achieve higher levels of straight through processing.

IMS will be implemented in two phases. Phase I, which includes (1) the new authorization capabilities that replace ANE, (2) the warehousing facility,<sup>6</sup> and (3) the reintroduction of dropped deliveries,<sup>7</sup> is scheduled to

<sup>4</sup> Such a linkage will permit customers to associate securities they expected to receive with specific securities they expected to deliver so that they no longer need to exempt a delivery until the receive providing the securities for it has been processed. Securities Exchange Act Release No. 48007 (June 10, 2003), 68 FR 35744 (order approving DTC Transaction Look-Ahead Process).

<sup>5</sup> In Phase I, authorization modes can be assigned for the following transaction types: (1) Institutional deliveries from a matching utility; (2) CNS; (3) NDOs; (4) Reintroduced drops; and (5) ACATS auto deliveries.

<sup>6</sup> The IMS warehouse feature will store delivery instructions on its database and will direct these deliveries into the processing system as NDOs that are due to settle on the appropriate settlement day.

<sup>7</sup> "Dropped" deliveries are deliveries from the previous day that were not completed. Under this option, "drops" will be retained and reintroduced into the system for processing on the following day. Participants using this service will have the option of having drops automatically resubmitted or of having the system require a reauthorization of dropped delivery instructions before resubmitting.

begin in July 2003. Phase II, which includes an optional customized delivery and recycle profile,<sup>8</sup> is scheduled to be implemented in December 2003.

### III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>9</sup> The Commission finds that DTC's proposed rule change is consistent with this requirement because it provides for an automated, centrally managed system whereby DTC's participants will have the ability to better manage and control the order and timing of their deliveries. Consequently, the proposed rule change should help reduce the number of late-in-the-day, manual interventions.

### 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, that the proposed rule change (File No. SR-DTC-2002-19) be and hereby is approved.

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

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48175; File No. SR-PCX-2003-30]

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

July 14, 2003.

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 June 30, 2003, the Pacific Exchange, Inc. ("PCX"

<sup>8</sup> DTC will file another proposed rule change for Commission approval before implementing Phase II.

<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(F).

<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.

or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which the PCX has prepared. 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 proposes to expand its marketing fee program to include all options, and also proposes to make other changes to the program as specified below. The text of the proposed rule change is available at the 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, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received. 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 those statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

In July 2000, the Exchange adopted a payment-for-order-flow program under which it imposes a fee on market maker transactions in designated equity option issues as set forth in a Schedule of Rates.<sup>3</sup> Under the program, the PCX collects and segregates the fee proceeds by trading post and makes the funds available to Lead Market Makers ("LMMs") for their use in attracting orders in the options traded at the posts. The LMMs use the funds to make payments to broker-dealers for the orders they direct to the PCX. Currently, the LMMs determine the specific terms governing the orders that qualify for payment and the amounts to be paid. The LMMs make their determinations in whatever manner they believe is most likely to be effective in attracting order flow to the PCX in the options traded at the LMMs' assigned posts. The

<sup>3</sup> See Securities Exchange Act Release No. 43290 (September 13, 2000), 65 FR 57213 (September 21, 2000).

Exchange assesses the marketing fee as set forth in a separate Schedule of Rates.

The Exchange seeks to modify its program for all option issues traded on the PCX, except for the Nasdaq-100 Tracking Index ("QQQ"), in the following ways:

*Issues Subject to Program:* Currently, the PCX's marketing fee program applies only to option issues that the PCX has classified as a top 250 issue. The PCX seeks to expand the program to include all equity option issues traded on the PCX, irrespective of its rank by volume across exchanges.

*Transaction Fee:* Currently, an LMM may suggest that the Exchange charge a marketing charge at a rate of \$0.00, \$0.25, \$0.50, \$0.75 or \$1.00 per contract. The PCX proposes to change the fee by assessing a flat \$0.60 rate per contract side on all equity options except for the QQQ options.

*Scope of Transactions Subject to Program:* Currently, the Exchange assesses a payment for order flow fee on all transactions other than market maker-to-market maker transactions. The PCX proposes to modify its program to collect marketing fees on only those transactions of LMMs and market makers involving customer orders from firms that accept payment for directing their orders to the PCX ("payment-accepting firms"). Under this proposal, an LMM will continue to be solely responsible for negotiating payment for order flow arrangements with payment-accepting firms. Although transactions involving firms that do not accept payment for their orders are not subject to the fee, the PCX notes that that LMMs and market makers would have no way of identifying prior to execution whether a particular order is from a payment-accepting firm or from a firm that does not accept payment for its order flow.

*Treatment of QQQ Options:* The Exchange intends to continue to collect a \$1.00 per-contract marketing fee for the QQQ options and to assess this fee on all QQQ transactions except for market maker-to-market maker transactions. The PCX notes that these are the current terms of its marketing fee program with respect to QQQ options.

The Exchange believes that the proposed changes to its marketing fee program are consistent with the Act in that they would serve to enhance the competitiveness of the PCX and its members. Accordingly, the PCX believes that this proposed rule change is consistent with and furthers the objectives of section 6(b)(5) of the Act,<sup>4</sup> which requires the rules of an exchange

be designed to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system. The Exchange also believes that the proposal furthers the objectives of section 11A(a)(1) of the Act,<sup>5</sup> which reflects the findings of Congress that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure fair competition among brokers and dealers among exchange markets.

## 2. Basis

The Exchange believes that this proposal is consistent with section 6(b) of the Act,<sup>6</sup> particularly section 6(b)(4) of the Act,<sup>7</sup> 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

The Exchange 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 establishes or changes a due, fee, or other charge imposed by the PCX, and therefore it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and Rule 19b-4(f)(2) thereunder.<sup>9</sup> 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 proposal 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-2003-30 and should be submitted by August 11, 2003.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## DEPARTMENT OF STATE

### Office of the Deputy Secretary

[Public Notice—4404]

### Removal of the Restriction on the Use of United States Passports for Travel To, In, or Through Iraq

The Deputy Secretary of State has decided to revoke the restriction on the use of U.S. passports for travel to, in, or through Iraq set forth in Public Notice 4283 of February 25, 2003 (68 FR 8791), as amended by Public Notice 4337 of April 16, 2003 (68 FR 18722), as further amended by Public Notice 4366 of May 15, 2003 (68 FR 26371). Effective upon signature of this Public Notice, United States passports are valid for travel to, in or through Iraq.

Conditions in Iraq remain hazardous for U.S. travelers. Persons considering travel to Iraq should consult the travel warnings available on the State Department's Bureau of Consular Affairs Web site, <http://travel.state.gov> prior to finalizing travel plans.

The Public Notice is effective upon signature.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>5</sup> 15 U.S.C. 78k-1.

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

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

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

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

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