

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52090; File No. SR-PCX-2005-68)

July 20, 2005

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Modify its Rate Schedule Retroactively to January 1, 2002 to Cap the Fees on Multiple Options Issues Transfers

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 13, 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 Exchange. On July 1, 2005, 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 change, as amended, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its rate schedule retroactive to January 1, 2002 to allow the Exchange to cap the fee it charges a Lead Market Maker (“LMM”) when multiple options issues are transferred. The text of the proposed rule change, as amended, is available on the Exchange’s Web site (<http://www.pacificex.com>), at the Exchange’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced and superseded the original proposal.

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 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 PCX proposes to add a defined rate schedule applicable to the cap on issue transfer fees. The PCX charges a Lead Market Maker (LMM) that has been allocated an options issue a \$1000 fee in the event that the LMM transfers the issue to another LMM, in accordance with PCX Transfer of Issues Guidelines.⁴ The purpose of this fee, which was filed as part of PCX-2001-51,⁵ is to help offset the administrative and technological costs related to transferring an options issue. While it is still accurate to charge \$1000 for the transfer of one issue, when multiple issues are transferred as part of a single transaction the overall costs associated with the transfer may be reduced. To assess an LMM the full \$1000 on every transferred issue, with no limit to the total charges, is not in keeping with the original intent of the transfer fee. By establishing a cap on the fees the Exchange charges an LMM, the Exchange is attempting to more accurately assess the LMM the true cost associated with a transfer, which was the purpose

⁴ PCX Transfer of Issues Guidelines is explained in PCX Regulatory Information Bulletin RBO-03-09 (Aug. 11, 2003).

⁵ See Securities Exchange Act Release No. 45351, (January 29, 2002), 67 FR 5631 (February 6, 2002).

of the fee when first implemented. The PCX proposes to continue charging \$1000 per issue transferred, but cap the fee at \$15,000 for the first one hundred issues transferred, and \$5000 for every one hundred (or any part of) additional issues transferred. Using this rate schedule the PCX would cap the transfer fee at \$15,000 for the first 100 issues, \$20,000 for up to 200 issues transferred and \$25,000 for up to 300 issues transferred, and so forth using the same formula. To qualify for the rate cap all transfers must be deemed to be part of a single transaction and meet the guidelines of the PCX Transfer of Issues Guidelines. The new fee cap will allow the PCX to more accurately assess an LMM the technological and administrative costs associated with the transfer of allocated issues. The Exchange proposes to make this fee effective retroactive to January 1, 2002, the date that PCX-2001-51 was effective. By making this filing retroactive to coincide with the date the transfer fee was originally implemented, the Exchange will have the ability to make any adjustments it deems necessary to allow previous charges to properly reflect the true intent of PCX-2001-51. The PCX will review all past transfers to determine if any adjustments are warranted pursuant to the proposed rate schedule contained in this filing.

2. Statutory Basis

The proposal is consistent with Section 6(b) of the Act,⁶ in general, and Section 6(b)(4) of the Act,⁷ 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.

⁶ 15 U.S.C. 78f(b).

⁷ 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 self-regulatory organization 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-2005-68 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-PCX-2005-68. 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. 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-2005-68 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.⁸

Jill M. Peterson
Assistant Secretary

⁸ 17 CFR 200.30-3(a)(12).