

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51102; File No. SR-PCX-2004-118)

January 28, 2005

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Arbitration Fees

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 December 2, 2004, 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 January 28, 2005, the Exchange filed Amendment No. 1 to the proposed rule change. 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

PCX is proposing to amend the PCX Options and PCX Equities, Inc. arbitration fees (“Options Fees” and “PCXE Fees,” respectively) with respect to fees that only affect OTP Holders and OTP Firms³ and ETP Holders.⁴ The text of the proposed rule change is available on the PCX Web site (<http://www.pacificex.com/legal/docs/prf/2004/SR-PCX->

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See PCX Rule 1(q)-(r).

⁴ See PCXE Rule 1(n).

2004-118.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 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 amend its arbitration fees with respect to OTP Holders and Firms and ETP Holders to increase and, in some instances, add arbitration-related fees. The proposed amendments are based on the National Association of Securities Dealers' ("NASD's") arbitration fees.

The Exchange's arbitration program offers a comparable level of service to that of the NASD and is one of the competing forums for securities arbitration. The Exchange sought to amend its fees in 2002,⁵ but due to the uncertainty of arbitration programs in California, the Exchange withdrew the filing and retained its then-current fee structure. As a result, the Exchange's arbitration fees remain deficient as compared to the fees that other self-regulatory organizations charge for arbitration. Thus, the Exchange proposes to modify its fees with respect to OTP Holders and OTP Firms and ETP Holders in order

⁵ See SR-PCX-2002-45.

to bring its fees in line with competing forums as well as recover costs associated with the PCX arbitration program.

1. OTP Firm or OTP Holder Controversies/ETP Controversies

The Exchange proposes to amend the fee schedules applicable to “OTP Firm or OTP Holder Controversies” under PCX Rule 12.31 for the Options Fees and “ETP Holder Controversies” under PCXE Rule 12.32 for the PCXE Fees. These fee schedules apply to cases that are between OTP Holders and Firms or associated persons thereof, or between ETP Holders or associated persons thereof. The Exchange proposes to modify the required fee for the Amount in Dispute, Filing Fee, Simplified (No Hearing) Fee, and the Hearing Session Deposit. These fee modifications are identical to the current fees imposed at the NASD.⁶

2. Pre-Hearing and Hearing Process Fees

The Exchange proposes new PCX Rule 12.33 and new PCXE Rule 12.32(k) to adopt pre-hearing and hearing process fees that mirror the fees charged by the NASD.⁷ The Exchange proposes that each OTP Holder, OTP Firm, or ETP Holder that is a party to an arbitration proceeding in which more than \$25,000 is in dispute pay a non-refundable pre-hearing process fee of \$750, due at the time the parties are sent notification of the arbitration panel. Thereafter, a non-refundable hearing process fee will be due when the parties are notified of the date and location of the first hearing session in accordance with the proposed hearing process fee schedule. If an associated person of an OTP Holder, OTP Firm or ETP Holder is a party, the OTP Holder, OTP Firm, or the ETP

⁶ See NASD Rule 10205(k).

⁷ See NASD Rule 10333(b).

Holder that employed the associated person at the time of the events which gave rise to the dispute, claim or controversy will be charged the process fees, even if the OTP Holder, OTP Firm, or ETP Holder is not a party.

These processing fees will bring revenue to the Exchange and compensate the Exchange at an earlier stage of the arbitration process. The processing fees are particularly important because much of the time and money spent by the Exchange to administer cases is required during the first months of the arbitration process.

3. Surcharge

The Exchange proposes to amend PCX Rule 12.32(c) and PCXE Rule 12.33(c) in order to modify the OTP Holder/OTP Firm Surcharge and ETP Holder Surcharge, respectively. The surcharge will continue to be based on the amount in dispute. The Exchange proposes to amend PCX Rule 12.32(a) and PCXE Rule 12.33(a) to provide that these surcharges may be refundable in an arbitration filed by a customer if the arbitration panel: (1) denies all of the customer's claims against the OTP Holder, OTP Firm, ETP Holder, or associated person, and (2) allocates all forum fees assessed pursuant to PCX Rule 12.31 or PCXE Rule 12.32 against the customer. The Director may also refund or cancel the OTP Holder/OTP Firm Surcharge or the ETP Holder Surcharge in other extraordinary circumstances. The Exchange believes it is appropriate to modify the surcharge in order to bring the surcharge up to date and ensure sufficient cost recovery associated with the PCX arbitration program.

Basis

The Exchange believes that the proposal is consistent with Section 6(b)⁸ of the

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15 U.S.C. 78f(b).

Act, in general, and Section 6(b)(4)⁹ of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among the Exchange's OTP Holders, OTP Firms, ETP Holders, and other persons using the Exchange's facilities.

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 proposed rule change has become effective pursuant to Section 19(b)(3)(A)¹⁰ of the Act and subparagraph (f) of Rule 19b-4 thereunder,¹¹ because the proposed rule change establishes or changes a due, fee, or other charge applicable only to a member 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

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f).

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.¹²

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 No. SR-PCX-2004-118 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-2004-118. 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

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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 January 28, 2005, the date on which the Exchange filed Amendment No. 1 to the proposed rule change. See 15 U.S.C. 78s(b)(3)(C).

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-2004-118 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.¹³

Margaret H. McFarland
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).