

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) after the date of the filing, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> 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.

The Commission has decided, consistent with the protection of investors and the public interest, to waive the five-day pre-filing notice and 30-day operative date to allow CBOE to immediately refund the increased telecommunications fees that were collected during 2002 to the members and member organizations that paid them.<sup>11</sup>

### 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 CBOE. All submissions should refer to file number SR-CBOE-2003-32, and should be submitted by September 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48340; File No. SR-MSRB-2003-06]

### Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change Filing by the Municipal Securities Rulemaking Board to Amend Rule A-14, on Annual Fees

August 14, 2003.

On July 3, 2003, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change (File No. SR-MSRB-2003-06) (the "proposed rule change"). The MSRB's proposed rule change amends Rule A-14, which provides for an annual fee paid to the MSRB.

The Commission published the proposed rule change for notice and comment in the **Federal Register** on July 15, 2003.<sup>3</sup> The Commission received two comment letters on the proposed rule change.<sup>4</sup> This order approves the proposed rule change.

#### I. Description of the Proposed Rule Change

The MSRB proposed to amend Rule A-14, on annual fees paid by brokers, dealers and municipal securities dealers (collectively "dealers"). In its filing, the MSRB requested that the proposed rule change become effective prior to the beginning of the Board's fiscal year of 2004 (October 1, 2003). The proposed rule change increases the annual fee, from \$200 to \$300, for each fiscal year a dealer conducts municipal securities

activities. The effective date of the proposed fee change does not alter the date in which the fees must be received by the Board.<sup>5</sup> Under Rule A-14, the fee must be received by the office of the Board no later than October 31 of the fiscal year of the Board.

#### II. Summary of Comments

The commission received two comment letters addressing the proposed rule change. Both comment letters expressed their opposition to the proposed rule change for an increase in annual fees. One commentator stated that the increasing fees drive out the smaller firms from engaging in municipal securities business.<sup>6</sup> The other commentator suggested that the fees paid to the MSRB should be based on generated revenues from a firm's municipal securities activities.<sup>7</sup>

#### III. Discussion and Commission Findings

Section 19(b) of the Act<sup>8</sup> requires the Commission to approve a proposed rule change filed by the MSRB if the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder. After careful review of the proposed rule change and the related comments, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, which govern the MSRB,<sup>9</sup> and, in particular, the requirements of section 15B(b)(2)(j) of the Act.<sup>10</sup> Under section 15B(b)(2)(j) of the Act, in pertinent part, the Board's rules must provide that each municipal securities broker and each municipal securities dealer pay to the Board "such reasonable fees and charges as may be necessary or appropriate" to defray the costs and expenses of operating and administering the Board. The Commission believes that the annual fee, as described in the proposed rule change, is necessary and appropriate to defray Board expenses. Thus, the Commission believes that the MSRB's proposal meets the required statutory threshold.

To address the comment letters, the Commission notes that the annual fee, levied under Rule A-14, is a flat rate that applies equally to all dealers conducting municipal securities

<sup>12</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.

<sup>3</sup> See Release No. 34-48140 (June 8, 2003), 68 FR 41852 (July 15, 2003).

<sup>4</sup> See letter from Erich Sokolower, Managing Director, Repex & Co., Inc., to MSRB, dated July 13, 2003; letter from Ying Cui, Winstrade, to MSRB, dated July 25, 2003.

<sup>5</sup> See Release No. 34-48140.

<sup>6</sup> See letter from Repex & Co, Inc., note 4, *supra*.

<sup>7</sup> See letter from Winstrade, note 4, *supra*.

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

<sup>9</sup> Additionally, in approving this rule the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78o-4(b)(2)(j).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

business regardless of the size or type of transactions. In Rule A-13, the MSRB sets forth a fee structure that assesses dealers based on dealers' underwriting and transaction amount.<sup>11</sup>

The Commission recognizes the difficulties inherent in assessing the MSRB's fee structure, and believes that the MSRB has made a good faith effort to do so in a manner that is fair and reasonable. The Commission agrees with the MSRB that the fees are not levied for a specific purpose but for general purposes, and that MSRB regulatory activities affect all participants in the dealer community.

#### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (File No. SR-MSRB-2003-06) be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48333; File No. SR-PCX-2003-37]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 by the Pacific Exchange, Inc. Relating to a One-Year Extension of the Automatic Opening Rotation Pilot Program

August 13, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 25, 2003, 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 August 4, 2003 and August 6, 2003, the Exchange filed amendments to the proposed rule

change.<sup>3</sup> The Exchange has designated the proposed rule change, as amended, as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act.<sup>4</sup> 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 extend its AOR pilot program for one year until September 30, 2004. The text of the proposed rule change, as amended, is available at the Office of the Secretary, 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 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 parts of such statements.

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

###### 1. Purpose

On September 30, 1999, the Commission approved a one-year pilot program for the operation of the Exchange's AOR System.<sup>5</sup> On August

21, 2000,<sup>6</sup> August 13, 2001,<sup>7</sup> and June 10, 2002,<sup>8</sup> the Commission granted one-year extensions to the pilot program. The pilot program is currently set to expire on September 30, 2003.

AOR provides a procedure to facilitate the execution of option orders at the opening by providing an electronic means of establishing a single price opening. The Exchange is requesting an additional extension of the AOR pilot program for one year, to September 30, 2004. The added time permits the Exchange to phase-in the Exchange's new trading platform for options, "PCX Plus", on an issue-by-issue basis.<sup>9</sup> As each issue is phased into PCX Plus, the Exchange will simultaneously phase-out such issue from the current AOR process. PCX Plus will eventually replace the AOR process in its entirety.<sup>10</sup> Hence, the Exchange will not be seeking permanent approval of the AOR pilot program.<sup>11</sup> The Exchange believes that the AOR pilot program is operating successfully and without any problems and, on that basis, believes that a one-year extension of the pilot program is warranted.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>13</sup> in particular, because it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition

(1999) (in part, approving AOR for sixteen issues on a thirty-day pilot basis).

<sup>6</sup> See Securities Exchange Act Release No. 43187 (August 21, 2000), 65 FR 52464 (August 29, 2000).

<sup>7</sup> See Securities Exchange Act Release No. 44688 (August 13, 2001), 66 FR 43600 (August 20, 2001).

<sup>8</sup> See Securities Exchange Act Release No. 46055 (June 10, 2002), 67 FR 41288 (June 17, 2002).

<sup>9</sup> See Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (Order approving PCX Plus).

<sup>10</sup> The PCX represents that it will file a rule proposal to eliminate the AOR pilot program rule text in Rule 6.64, Commentary .03 if the PCX Plus transition is completed before September 30, 2004.

<sup>11</sup> The PCX estimates that PCX Plus will be implemented gradually on an issue-by-issue basis beginning December 15, 2003, and is anticipated to become completely operative by June 30, 2004. The Exchange will not be seeking an additional extension of its AOR pilot program provided that the PCX Plus implementation is completed without significant delay.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> Rule A-13 provides for an underwriting fee of \$.03 per \$1000 par value of bonds and \$.01 per \$1000 par value of notes, and a transaction fee of \$.005 per \$1000 par value.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</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.

<sup>3</sup> See letters from Tania J. Cho, Staff Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 1, 2003, replacing Form 19b-4 in its entirety ("Amendment No. 1") and August 6, 2003 ("Amendment No. 2"). In Amendment No. 1, the PCX clarified the implementation and operative dates of PCX Plus and represented that it will not be seeking additional extension of the Automated Opening Rotation ("AOR") pilot program provided that PCX Plus has been implemented without delay. The PCX also made minor technical corrections to a citation in its footnotes and in the rule text and changed its basis for filing the proposed rule change from Section 19(b)(2) to Section 19(b)(3)(A)(iii) of the Act. In Amendment No. 2, the PCX changed its basis for filing the proposed rule change from Section 19(b)(3)(A)(iii) to Section 19(b)(3)(A) and Rule 19b-4(f)(6) of the Act and made minor technical corrections to a reference in its footnotes.

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Securities Exchange Act Release Nos. 41970 (September 30, 1999), 64 FR 54713 (October 7, 1999) (approving one-year AOR pilot) and 41824 (September 1, 1999), 64 FR 49263 (September 10,