

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-49560; File No. SR-PCX-2004-23)**

**April 13, 2004**

**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 Exchange Fees and Charges**

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on March 24, 2004, the Pacific Exchange, Inc. (“PCX”) 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 PCX. On April 1, 2004, the PCX filed Amendment No. 1 to the proposed rule change, which replaces the original filing in its entirety.<sup>3</sup> The PCX filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission. 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 PCX, through its wholly-owned subsidiary PCX Equities, Inc. (“PCXE”), proposes

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Tania Blanford, Staff Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (“Division”), Commission, dated March 31, 2004. In Amendment No. 1, the PCX redesignated the filing from a filing under subparagraph (f)(2) of Rule 19b-4 to a filing under subparagraph (f)(6) of Rule 19b-4, as well as made a technical correction to the rule text. The substance of Amendment No. 1 is incorporated in this notice.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

to amend its fee schedule for services provided to ETP Holders<sup>6</sup> that use the Archipelago Exchange (“ArcaEx”) in order to correct a technical error in the fee schedule. The text of the proposed rule change, as amended, is set forth below. Proposed new language is in italics; proposed deletions are in [brackets].

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## SCHEDULE OF FEES AND CHARGES

### FOR EXCHANGE SERVICES

#### ARCHIPELAGO EXCHANGE: TRADE RELATED CHARGES

##### EXCHANGE TRANSACTIONS

ETP Holders [and Sponsored Participants]<sup>1</sup>

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#### ARCHIPELAGO EXCHANGE: OTHER FEES AND CHARGES

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[USER] ETP HOLDER TRANSACTION CREDIT

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MARKET DATA REVENUE SHARING CREDIT<sup>2</sup>

#### **Tape A Securities**

Cross Order	50% tape revenue credit per qualifying trade  (applicable to any Cross Order, as defined in PCXE Rule 7.31(s), where the ETP Holder [or Sponsored Participant] represents all of one side of the transaction and all or a portion of the other side).
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<sup>6</sup> See PCXE Rule 1.1(n) (defining “ETP Holder”).

**Tape B Securities**

Liquidity Provider Credit	50% tape revenue credit per qualifying trade  (applicable to limit orders that are residing in the Book and that execute against inbound marketable orders).
Directed Order	50% tape revenue credit per qualifying trade  (applicable to any market maker that executes against a Directed Order within the Directed Order Process, as defined in PCXE Rule 7.37(a)).
Cross Order	50% tape revenue credit per qualifying trade  (applicable to any Cross Order, as defined in PCXE Rule 7.31(s), where the ETP Holder [or Sponsored Participant] represents all of one side of the transaction and all or a portion of the other side.
“Drop Copy” <sup>3</sup> Processing Fee	\$0.001 per share (applicable to off-board trades in listed and Nasdaq securities)

<sup>1</sup> These transaction fees do not apply to: (1) Directed Orders, regardless of account type, that are matched within the Directed Order Process; (2) Directed Orders for the account of a retail public customer that are executed partially or in their entirety via the Directed Order, Display Order, Working Order, and Tracking Order processes (however, any unfilled or residual portion of a retail customer’s order that is routed away and executed by another market center or participant will incur this transaction fee); (3) orders executed in the Opening Auction and the Market Order

Auction; (4) Cross Orders; (5) commitments received through ITS; and (6) participants in the Nasdaq UTP Plan that transmit orders via telephone.

<sup>2</sup> For exchange-listed securities, an ETP Holder [User] that submits a Tracking Order instruction that subsequently matches against an inbound marketable order will not be entitled to receive the Liquidity Provider Credit.

<sup>3</sup> A “drop copy” is an electronic report of a transaction for an ETP Holder’s account that is executed on another market center and that has been prepared for informational purposes (e.g., Market Maker inventory tracking, surveillance audit trail). Market Maker transactions that are subject to this fee will not be eligible to receive the Market Maker Transaction Credit or [User] ETP Holder Transaction Credit.

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## **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 received on the proposed rule change. 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 such statements.

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

#### **1. Purpose**

The PCX is proposing to correct a technical error in the fee schedule by deleting all references to the term “Sponsored Participant”<sup>7</sup> in the fee schedule. Pursuant to PCXE Rule

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<sup>7</sup> See PCXE Rule 1.1(tt) (defining “Sponsored Participant”).

2.17, the PCX imposes certain dues, charges or fees upon an ETP Holder for the use of equipment or facilities or for services or privileges granted by the PCX. A Sponsored Participant may obtain authorized access to the ArcaEx by entering into a customer agreement with an ETP Holder.<sup>8</sup> The PCX, however, does not impose any fees, dues or charges on the Sponsored Participant.

Currently, the “Exchange Transactions” and “Market Data Revenue Sharing Credit” portions of the fee schedule incorrectly reference Sponsored Participants as entities billed or credited by the PCX.<sup>9</sup> Thus, the PCX wishes to delete references to Sponsored Participants in the fee schedule at this time.

## 2. Statutory Basis

The PCX believes that its proposal is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>11</sup> in particular, in that it is designed to perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest.

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

The PCX 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

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<sup>8</sup> See PCXE Rule 7.29.

<sup>9</sup> Telephone conversation between Tania Blanford, Staff Attorney, Regulatory Policy, PCX, and Elizabeth MacDonald, Attorney, Division, Commission, April 13, 2004.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

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 PCX has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>13</sup>

Because the foregoing proposed rule change does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date on which it was filed, or such shorter

time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. At any time within 60 days of the filing of the 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.<sup>14</sup> As required under Rule 19b-4(f)(6)(iii), the PCX provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to filing the proposal with the Commission, or such shorter period as designated by the Commission.

The PCX has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> For the purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on April 1, 2004, the date the PCX filed Amendment No. 1.

investors and the public interest. Such waiver will permit the PCX to correct a technical error in its fee schedule and accordingly clarify the fees charged for services provided to ETP Holders. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>15</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. 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](mailto:rule-comments@sec.gov). Please include File Number SR-PCX-2004-23 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 Number SR-PCX-2004-23. 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

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For purposes only of waiving 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).

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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will 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 Number SR-PCX-2004-23 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.<sup>16</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).