

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49671; File No. SR-PCX-2004-32)

May 7, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Amending the Designated Options Examination Authority Fee

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 April 15, 2004, 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. 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 Exchange is proposing to amend its Schedule of Fees and Charges by changing the Designated Options Examination Authority (“DOEA”) fee charged to its members. The text of the proposed rule change is available at the Commission and the PCX.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

1. Purpose

In 2003, the Exchange filed a proposed rule change that allowed the Exchange to assess a \$2000/month DOEA fee in order to recover the Exchange's costs of DOEA examinations for which it would be responsible.³ At the time the Exchange set DOEA fee, it contemplated that it would conduct some of the examinations itself and would contract with the NASD to conduct other examinations. For that reason, the Exchange adopted a flat fee of \$2000/month based upon the preexisting \$2000/month Designated Examination Authority ("DEA") fee. The Exchange anticipated that the costs of the examinations, whether conducted by the NASD or by the Exchange, would be about the same as the costs of the DEA examinations.

The Exchange has relied exclusively on the NASD to conduct its DOEA examinations and as a result, believes it is appropriate to amend its Schedule of Fees and Charges to change its DOEA fee from \$2000/month to a fee that would be a pass through of the costs that the Exchange pays the NASD for conducting DOEA examinations plus a 17% administrative charge. The PCX believes that since the current DOEA fee applies to all firms, even to smaller firms that conduct largely equities business, but also do occasional options trades for their public customers, assessing a flat fee for all firms regardless of the number of Registered Representatives that they maintain, is inequitable. The Exchange represents that the 17% percent administration fee that it proposes to charge relates directly to costs actually incurred by the Exchange in the administration of this program.

³ See Securities Exchange Act Release No. 47577 (March 26, 2004), 68 FR 16109 (April 2, 2003) (File No. SR-PCX-2003-03).

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,⁴ in general, and Section 6(b)(4) of the Act,⁵ in particular, 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

Written comments were neither solicited nor received with respect to the proposed rule change.

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁶ and Rule 19b-4(f)(2)⁷ thereunder, because it changes a fee imposed by the Exchange. 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.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4(f)(2).

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>);
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2004-32 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-2004-32. 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 Section, 450 Fifth Street, NW, Washington, DC 20549-0609. 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-2004-32 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).