

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-49802; File No. SR-PCX-2004-31)**

**June 3, 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 thereunder,<sup>2</sup> notice is hereby given that on April 14, 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 PCX. The proposed rule change has been filed by PCX as establishing or changing a due, fee, or other charge under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. On May 21, 2004, the Exchange filed Amendment No. 1 to the proposal.<sup>5</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**

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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> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>5</sup> See Letter from Mai S. Shiver, Acting Director/Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 19, 2004. In Amendment No. 1, the Exchange revised the purpose section of the proposed rule change and the rule text to clarify that the Order Cancellation fee applies to a Clearing Member who electronically cancels orders on behalf of its customers or on its own behalf when it self-clears, when the conditions specified in the rule are satisfied. Amendment No. 1 supersedes and replaces the text of the proposed rule change in its entirety.

PCX is proposing to amend its Schedule of Fees and Charges by reinstating an Order Cancellation fee. The text of the proposed rule change is available at the Exchange 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 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 Exchange represents that it previously established the Order Cancellation fee to address operational problems and costs resulting from the practice of market participants canceling orders immediately after they route those orders electronically to the PCX.<sup>6</sup> The Exchange states that, while the Order Cancellation fee was intended to temper activity among trading participants who immediately cancelled orders without routing significant order flow to the Exchange, as applied, it had the unintended effect of penalizing Clearing Members because the Exchange did not have the methodology to correlate the cancellation of an order with the

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<sup>6</sup> See Securities Exchange Act Release No. 45262 (January 9, 2002), 67 FR 2266 (January 16, 2002) (Notice of Filing and Immediate Effectiveness of SR-PCX-2001-47).

correspondent activity of a specific Clearing Member. On May 30, 2003, the Exchange filed a proposed rule change that repealed the Order Cancellation fee then in effect,<sup>7</sup> despite the fact that operational problems and costs resulting from the practice of market participants canceling orders immediately after they place such orders continued to be problematic.

The Exchange represents that it has effected technological enhancements to its billing system and is now able to ascertain the identity of the Clearing Member's customer who cancels orders. The Exchange states that this enhancement allows the Exchange to evaluate order cancellations beyond the aggregate cancellations cleared through a Clearing Member, thus providing the Clearing Members a vehicle for passing through any resulting charges to their customers. Therefore, the Exchange seeks to reinstate the Order Cancellation fee at \$1.00 per electronically routed order cancelled and apply the fee to a Clearing Member who electronically cancels orders on behalf of its customers or on its own behalf when it self-clears in any month where both of the following conditions are satisfied: (i) the total number of orders canceled for any customer or for itself equals or exceeds 500 contracts; and (ii) the ratio of such canceled orders to executed orders equals or exceeds two to one. The Exchange represents that it will continue to bill the Clearing Member, but the Clearing Member will have the opportunity to pass the fee along to its customers.

## 2. Statutory Basis

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

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<sup>7</sup> See Securities Exchange Act Release No. 48031 (June 13, 2003), 68 FR 37189 (June 23, 2003) (Notice of Filing and Immediate Effectiveness of SR-PCX-2003-25).

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 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 foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and Rule 19b-4(f)(2) thereunder,<sup>9</sup> because it establishes a fee to be imposed by the Exchange. At any time within sixty 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>10</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:

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

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-2004-31 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-2004-31. 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

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<sup>10</sup> For purposes of calculating the sixty-day abrogation period, the Commission considers the period to have begun on May 21, 2004, the date on which PCX filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

submissions should refer to File Number SR-PCX-2004-31 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>11</sup>

J. Lynn Taylor  
Assistant Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).