

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50101; File No. SR-PCX-2004-51)

July 28, 2004

Self-Regulatory Organizations; Pacific Exchange, Inc; Order Granting Approval to a Proposed Rule Change Amending the Designated Options Examination Authority Fee on a Retroactive Basis

On June 1, 2004, the Pacific Exchange, Inc. (“PCX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to amend its Schedule of Fees and Charges by changing the Designated Options Examination Authority (“DOEA”) fee charged to its members. The Exchange proposed to apply the fee changes on a retroactive basis effective as of January 2004.<sup>3</sup> The proposed rule change was published for comment in the Federal Register on June 18, 2004.<sup>4</sup> The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>5</sup> and, particularly, Section 6(b)(4) of the Act, which requires that the rules of an exchange

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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> On April 15, 2004, the Exchange filed an identical amendment to its Schedule of Fees and Charges, as immediately effective. See Securities Exchange Act Release No. 49671 (May 7, 2004), 69 FR 27665 (May 17, 2004) (File No. SR-PCX 2004-32). Because the Exchange also sought to apply the amendment to the DOEA fee on a retroactive basis, the Exchange submitted the proposed rule change for notice and comment.

<sup>4</sup> See Securities Exchange Act Release No. 49828 (June 8, 2004), 69 FR 34210.

<sup>5</sup> In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

provides for the equitable allocation of reasonable fees among its members.<sup>6</sup> The current DOEA fee is a pass through of the costs the Exchange pays the National Association of Securities Dealers for conducting DOEA examinations plus a 17% administrative charge. The Commission believes that the Exchange's proposal to apply its current DOEA fee on a retroactive basis to January 2004 is equitable because it allows the Exchange to charge members the actual costs of the examinations.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act<sup>7</sup>, that the proposed rule change (SR-PCX-2004-51) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).