

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50635; File No. SR-PCX-2004-103)

November 4, 2004

Self-Regulatory Organizations; Pacific Exchange, Inc. Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Changes to PCX's Schedule of Fees and Charges for Exchange Services

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 October 20, 2004, the Pacific Exchange, Inc. (“PCX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has filed this proposed rule change pursuant to Section 19(b)(3)(A) and Rule 19b-4(f)(6) thereunder,<sup>3</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 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly owned subsidiary PCX Equities, Inc. (“PCXE” or “Corporation”), proposes to make a change to the Schedule of Fees and Charges for Exchange Services (“Schedule”) with respect to the fingerprinting fee and investigation fee for PCXE. The text of the proposed rule change is attached below. Proposed new language is italicized; proposed deletions are in [brackets].

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

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SCHEDULE OF FEES AND CHARGES  
FOR EXCHANGE SERVICES

**ARCHIPELAGO EXCHANGE: ETP FEES AND CHARGES**

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Investigation Fee	<u>\$125</u> [\$100] fee per applicant for registration as ETP Holder (includes any control person listed on Schedule A of Form BD) or Market Maker Authorized Trader. Fee is also applicable to each Authorized Trader and its designated supervisor associated with an ETP Holder for which PCX is DEA.
Fingerprinting Fee	<u>\$35</u> [\$30] fee per applicant for registration as ETP Holder (includes any control person listed on Schedule A of Form BD) or Market Maker Authorized Trader. Fee is also applicable to each Authorized Trader and its designated supervisor associated with an ETP Holder for which PCX is DEA.

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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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposal. 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 proposes to make a change to the Schedule with respect to the fingerprinting fee and the investigation fee for PCXE.

In September 2003, the Exchange modified the PCX membership fees relating to the options orientation fee.<sup>4</sup> Previously, the orientation and testing fee (\$1,000) was comprised of different components including orientation and examination administration, background investigations and fingerprinting. Due to the launch of PCX Plus, the Exchange reconfigured a development and delivery process for the Exchange's orientation and testing program and proposed to revise the options orientation and test fee to allow separate charges for the options orientation fee (\$1,000), the background investigations (\$125), and the fingerprinting fee (\$35).

In establishing these new options fees, the Exchange inadvertently failed to modify the existing PCXE fingerprinting fee and investigation fee<sup>5</sup> to match the proposed fee changes for PCX options. At that time, the PCXE fingerprinting fee was \$100 and the investigation fee was \$30. Therefore, the Exchange proposes to modify the PCXE fingerprinting fee and investigation fee in order to make the fees identical to the PCX options fingerprinting fee and investigation fee.

## 2. Statutory Basis

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<sup>4</sup> See Securities Exchange Act Release No. 48597 (October 7, 2003), 68 FR 59439 (October 15, 2003) (SR-PCX-2003-57).

<sup>5</sup> See Securities Exchange Act Release No. 45680 (April 2, 2002), 67 FR 17094 (April 9, 2002) (SR-PCX-2002-16).

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 allocation of reasonable dues, fees and other charges among its ETP Holders, issuers and other persons using the facilities.

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 pursuant to Section 19(b)(3)(A)(ii)<sup>6</sup> of the Act and subparagraph (f)(2) of Rule 19b-4 thereunder because it establishes or changes a due, fee, or other charged imposed by the Exchange. 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.

IV. Solicitation of Comments

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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 SR-PCX-2004-103 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 SR-PCX-2004-103. 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 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 SR-PCX-2004-103 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>7</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).