

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50742; File No. SR-PCX-2004-101)

November 29, 2004

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto to Add a \$500 Application Fee for Waivers of Exchange Examination Requirements Pursuant to PCX Rule 2.5(c)(4)

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 October 18, 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. On November 23, 2004, PCX amended the proposed rule change.³ The PCX has designated this proposal as one changing a fee imposed by the PCX under Section 19(b)(3)(A)(ii) of the Act⁴ and Rule 19b-4(f)(2) thereunder,⁵ 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Amendment No. 1 replaced and superseded the original filing in its entirety.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

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

The PCX proposes to amend its Schedule of Fees and Charges For Exchange Services to add a \$500 application fee for waivers of Exchange examination requirements pursuant to PCX Rule 2.5(c)(4). The text of the proposed rule change is available at the PCX 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 its proposal and discussed any comments it received regarding 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 PCX is proposing to implement a non-refundable application fee of \$500 when a request to waive an Exchange examination requirement is submitted pursuant to PCX Rule 2.5(c)(4). Since the Commission approved PCX Rule 2.5(c)(4),⁶ the Exchange has received a number of requests for waivers of its examination requirements.

When a request is submitted to the Exchange, the Exchange's Shareholder and Registration Services Department ("SRS") evaluates each application. SRS must independently verify each statement made in the application to ensure that waivers are

⁶ See Securities Exchange Act Release No. 49922 (June 28, 2004), 69 FR 40701 (July 6, 2004)(SR-PCX-2004-51).

only granted to those who are properly qualified. Applicants requesting waivers have based their requests on numerous factors including employment history, education, professional licenses held, examinations passed, etc. Depending on the type of justification given and how recently such justification occurred, the amount of time needed to independently verify each individual justification varies from minutes to hours. Collectively verifying all justifications provided requires SRS to devote significant resources to review and process each application. As such, SRS has been devoting significant resources to these applications and the \$500 fee is needed to allow the Exchange to recover costs associated with the processing of these applications.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act⁸ in particular, because it provides for the equitable allocation of dues, fees, and other charges among its OTP Holders and other persons using its facilities for the purpose of trading option contracts.

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.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

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 proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act⁹ and Rule 19b-4(f)(2)¹⁰ thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange.

Accordingly, the proposal will take effect upon filing with the Commission. 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

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

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2004-101 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-2004-101. 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 File Number SR-PCX-2004-101 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.¹¹

Margaret H. McFarland
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).