

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50817; File No. SR-PCX-2004-105)

December 7, 2004

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto to Make Clarifying Changes to the PCX Schedule of Fees and Charges with Respect to the Options Orientation Fee to Include the Cost of the Series 44 Or 45 Examination and to Adopt a New Fee Associated With the Series 46 Examination

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 28, 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 December 3, 2004, PCX filed Amendment No. 1 to the proposed rule change.³ PCX filed this proposal pursuant to Section 19(b)(3)(A)⁴ of the Act and Rule 19b-4(f)(6)⁵ thereunder, 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³ Amendment No. 1 replaced and superseded the original filing in its entirety. For purpose of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on December 3, 2004, the date that the PCX filed Amendment No. 1.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

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

PCX is proposing to make a clarifying change to the PCX Schedule of Fees and Charges (“Schedule”) with respect to the Options Orientation Fee. The text of the proposed rule change is available at 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, 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. 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 amend the Schedule to make a clarifying change to the Options Orientation Fee. In October of 2003, the Exchange amended the Options Orientation Fee in connection with the launch of PCX Plus.⁶ At the time, the Exchange reconfigured a development and delivery process for the Exchange’s Orientation and Examination program. Pursuant to the revised structure, the Exchange developed an orientation and examination content to be administered by the National Association of Securities Dealers, Inc (“NASD”). The revised Options Orientation Fee of \$1,000 was intended to include the cost of the Series 44 or Series 45 examination, the investigation

⁶ See Securities Exchange Act Release No. 48597 (October 7, 2003), 69 FR 59439 (October 15, 2003)(SR-PCX-2003-57).

fee and the fingerprinting fee,⁷ but not the Series 46 examination.⁸ Thus, since October 2003, the Exchange has charged \$1,000 for the Options Orientation Fee (including the cost of the Series 44 or 45 examination) and no charge has applied for the Series 46 examination. The Exchange proposes to amend the Options Orientation Fee by adding a parenthetical in the Schedule to clarify that the Options Orientation Fee only includes the cost of the Series 44 or Series 45 examination.

The Exchange also proposes to adopt a new fee of \$200 to help recover the costs associated with the Series 46 examination. Pursuant to a contractual agreement between PCX and NASD, PCX incurs fixed expenses in connection with the administration of each Series 46 examination. Further, the Exchange expends staff resources for ongoing development and maintenance of examination content. As such, the proposed fee will recover expenses relating to administration, development and ongoing support of the Series 46 examination.

The Exchange believes that these proposed changes are necessary to alleviate confusion among the OTP Holders and OTP Firms with respect to the Options Orientation Fee.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the

⁷ If the applicant is not required to take the examination (i.e., qualifies for a waiver), such applicant is only required to pay a separate investigation and fingerprinting fee.

⁸ Series 46 is an optional examination taken subsequent to the Series 44 examination.

Act⁹ in general, and Section 6(b)(4) of the Act¹⁰ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its OTP Holders, OTP Firms, issuers and 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

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such

shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² At any time within 60 days of the filing of the proposed rule change, the Commission may summarily

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2004-105 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-2004-105. 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-2004-105 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.¹³

Margaret H. McFarland
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).