

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51195; File No. SR-PCX-2005-12)

February 11, 2005

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 January 28, 2005, 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 PCX. PCX submitted Amendment No. 1 to the proposal on February 11, 2005.<sup>3</sup> The Exchange filed this proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</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, as amended, from interested persons.

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> In Amendment No. 1, the Exchange clarified that it will round up to the next multiple of ten to determine an OTP Holder’s fee to access the Actant quoting software for a particular month should an OTP Holder quote less than its full allotment of ten options issues. The Exchange also clarified that it proposes to impose a \$0.95 per contract marketing fee for the Nasdaq-100 Tracking Stock (“QQQQ”) options, a \$0.05 per contract Royalty Fee for QQQQ options, and will retain the \$0.05 per contract Royalty Fee for QQQQ options as a means to help pay for the \$0.10 Royalty Fee incurred by the Exchange on each QQQQ options traded at PCX.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

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

PCX proposes to amend its Schedule of Fees and Charges in order to modify the fee that applies to each OTP Holder that access the Exchange's server capacity to use the Actant quoting software employed in PCX Plus, and to amend the provisions for the handling of options on the QQQQ under the Exchange's marketing fee program. The text of the proposed rule change is available on PCX's website (<http://www.pacificex.com>), at PCX's Office of the Secretary, and at the Commission's Public Reference Room.

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 the proposed rule change and discussed any comments it received on the proposed rule change, as amended. 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

Actant Quoting Software

The purpose of this proposed rule change is to modify the fee for those OTP Holders that wish to access the Exchange's server capacity to use the Actant quoting software employed in PCX Plus. Actant is a third-party vendor with whom the Exchange has contracted to provide quoting software to be employed in PCX Plus. Since, according to PCX, it would be prohibitively expensive for small OTP Holders to purchase their own servers, the Exchange will create a server bank from which each OTP Holder could lease capacity. This would facilitate participation on

PCX Plus by smaller OTP Holders that might not have the expertise, capital, or staff to acquire and maintain the servers needed to support the quoting software. The Exchange currently charges \$100 per month to each OTP Holder who accesses the Exchange's server capacity in order to use the Actant software.

The Exchange is proposing to modify the current fee from \$100 per month for each OTP Holder who accesses the Exchange's server capacity in order to use the Actant software to \$100 per month for each ten option issues an OTP Holder quotes through the Exchange's server capacity to use the Actant quoting software. The Exchange notes that it will not prorate the fee should an OTP Holder quote less than its full allotment of ten options issues. For purposes of billing, the Exchange will round up to the next multiple of ten to determine an OTP Holder's fee for a particular month. Under the proposed fee structure, an OTP Holder quoting 8 issues during a month would be charged \$100, an OTP Holder quoting 32 issues would be charged \$400 a month, and an OTP Holder quoting 115 issues would be charged \$1,200 a month. The Exchange represents that the change is necessary because the costs associated with providing the server bank to use Actant software are directly related to the number of issues being quoted, not the number of users.

#### QQQQ

The Exchange is proposing to amend its Schedule of Fees and Charges in order to modify the provisions for the handling of options on QQQQ under the Exchange's marketing fee program. The Exchange is currently imposing a \$1.00 per contract marketing fee for the QQQQ options. The Exchange makes the funds available to Lead Market Makers ("LMMs") for their use in attracting orders. The Exchange does not retain any of the money collected as marketing fees. Any fees collected that are not used by the LMMs are rebated to the market makers. In addition,

the Exchange currently incurs a Royalty Fee of \$0.10 for every QQQQ option traded at PCX. At this time the Exchange is absorbing 100% of the cost for the Royalty Fee. To help offset some of the costs incurred by the Exchange without adding additional costs to PCX Market Makers, the Exchange proposes to impose a \$0.95 per contract marketing fee for the QQQQ options and a \$0.05 per contract Royalty Fee for QQQQ options. Under this proposal, the Exchange will retain the \$0.05 per contract Royalty Fee for QQQQ options as a means to help pay for the \$0.10 Royalty Fee incurred on each QQQQ options traded at PCX. In addition, the Exchange is proposing to exclude trades of QQQQ from the existing cap on marketing fees. This change is necessary to help the Exchange remain competitive in its trading of QQQQ options.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>7</sup> in particular, in that it provides for the equitable allocation of dues, fees, and other charges among its members.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

---

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

<sup>7</sup> 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, as amended, were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>9</sup> because it is concerned solely with the administration of 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.<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, as amended, 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 File Number SR-PCX-2005-12 on the subject line.

---

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

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

<sup>10</sup> See 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on February 11, 2005, the date PCX filed Amendment No. 1.

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-2005-12. 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 Section, 450 Fifth Street, NW, Washington, DC 20549. 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

submissions should refer to File Number SR-PCX-2005-12 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>

Margaret H. McFarland  
Deputy Secretary

---

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