

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-51580; File No. SR-PCX-2005-36)

April 20, 2005

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Arbitration Fees

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 March 24, 2005, 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 PCX. On April 18, 2005, the PCX filed Amendment No. 1 to the proposed rule change.³ The PCX filed this proposal pursuant to Section 19(b)(3)(A)(iii) of the Act⁴ and Rule 19b-4(f)(3) thereunder,⁵ as one concerned solely with the administration of the self-regulatory organization, 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 In Amendment No. 1, the PCX provided an additional statutory basis for this proposal.

⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵ 17 CFR 240.19b-4(f)(3).

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

The PCX is proposing to amend the PCX arbitration rules in order to make a minor rule numbering change. The text of the proposed rule change, as amended, is available on PCX's Web site (<http://www.pacificex.com>), at the principal office of the PCX, and at the Commission's Public Reference Section.

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, as amended, 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. 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

Purpose

The Exchange proposes to make a minor rule numbering change to the PCX arbitration rules. In December 2004, the Exchange filed a proposed rule change with the Commission to amend the PCX Options and PCX Equities ("PCXE") arbitration rules with respect to arbitration fees that only affect OTP Holders, OTP Firms and ETP

6 Holders. As part of that filing, the Exchange proposed to adopt a Pre-Hearing and Hearing Process Fee in PCX Rule 12.33 and PCXE Rule 12.32(k). At this time, the Exchange proposes to renumber the PCX Options rule for Pre-Hearing and Hearing Process Fees from PCX Rule 12.33 to PCX Rule 12.31(k) so that the rule is similarly located for both PCX Options and PCX Equities. PCX Rule 12.31 contains the Schedule of Fees for arbitration proceedings. The Exchange believes the renumbering will provide consistency and ease of use for Exchange staff as well as the OTP Holders, OTP Firms, ETP Holders and the public. The Exchange does not propose any substantive changes to this rule or any rule renumbering changes for PCX Equities.

Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b)⁷ of the Act, in general, and Section 6(b)(4) of the Act⁸, in particular, in that it provides for the equitable allocation of reasonable fees and charges among its OTP Holders, OTP Firms, ETP Holders, issuers and other persons using its facilities. The Exchange also believes the proposal, as amended, is consistent with Section 6(b)(5)⁹ in that it is related to the administration of the Exchange because it reorganizes the Exchange's rules but does not change the substance of these rules.

⁶ See Exchange Act Release No. 51102 (January 28, 2005), 70 FR 6063 (February 4, 2005) (SR-PCX-2004-118).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78f(b)(5).

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.

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)(iii)¹⁰ of the Act and subparagraph (f)(3) of Securities Exchange Act Rule 19b-4¹¹ thereunder as one 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 Act.¹²

¹⁰ 15 U.S.C. §78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on April 18, 2005, when Amendment No. 1 was filed. See, supra, note 3.

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. Please include File Number SR-PCX-2005-36 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-2005-36. 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 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-2005-36 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).