

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51645; File No. SR-PCX-2005-47)

May 2, 2005

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Relating to Exchange Fees and Charges

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 April 6, 2005, the Pacific Exchange, Inc. (“PCX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change relating to fees applicable to Option Strategy Executions as described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 19, 2005, PCX filed Amendment No. 1 to the proposed rule change.³ On April 26, 2005, PCX filed Amendment No. 2 to the proposed rule change.⁴ PCX designated the proposed rule change, as amended, as establishing or changing a due, fee, or other charge imposed by PCX under Section 19(b)(3)(A)(ii) of the Act,⁵ and Rule 19b-4(f)(2) thereunder,⁶ which renders the proposal

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced and superseded the proposed rule change in its entirety. In Amendment No. 1, PCX proposed that the fee cap on strategy trades operate on a pilot basis until September 1, 2005. Further, Amendment No. 1 clarified that in order to qualify for the fee cap, OTP Holders and OTP Firms are required to submit to PCX required supporting documentation. Finally, Amendment No. 1 clarified that the fee cap applies to strategy trades executed on the same trading day in the same option class.

⁴ In Amendment No. 2, PCX clarified in the Exchange’s Schedule of Fees and Charges that the fee cap applies to each type of strategy trade executed on the same trading day in the same option class.

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4(f)(2).

effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested parties.

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

The Exchange proposes to amend its Schedule of Fees and Charges in order to modify the fee that applies to Option Strategy Executions. The text of the proposed rule change is available on the Exchange's Web site (<http://www.pacificex.com/>), at the Office of the Secretary, 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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 modify the fee that applies to Option Strategy Executions.

These transactions include reversals and conversions,⁷ dividend spreads,⁸ and box spreads.⁹

Because the referenced Options Strategy Transactions are generally executed by professionals whose profit margins are generally narrow, the Exchange proposes to cap the transaction fees associated with such executions at \$1,000 per strategy execution that are executed on the same trading day in the same option class.¹⁰ In addition, the Exchange is proposing a monthly cap of \$50,000 per initiating firm for all strategy executions. The Exchange believes that by keeping fees low, the Exchange will be able to attract liquidity by accommodating these transactions.

The Exchange represents that OTP Holders and OTP Firms who wish to benefit from the fee cap would be required to submit to the Exchange forms with supporting documentation (e.g., clearing firm transaction data) by the next business day to qualify for the cap.¹¹

⁷ According to the Exchange, reversals and conversions are transactions that employ calls, puts and the underlying stock to lock in a nearly risk free profit. Reversals are established by combining a short stock position with a short put and a long call position that share the same strike and expiration. Conversions employ long positions in the underlying stock that accompany long puts and short calls sharing the same strike and expiration.

⁸ According to the Exchange, dividend spreads are trades involving deep in the money options that exploit pricing differences arising around the time a stock goes ex-dividend.

⁹ According to the Exchange, box spreads are a strategy that synthesizes long and short stock positions to create a profit. Specifically, a long call and short put at one strike is combined with a short call and long put at a different strike to create synthetic long and synthetic short stock positions, respectively.

¹⁰ The Exchange clarified in Amendment No. 2, supra note 4, that the daily \$1,000 fee cap applies to each type of strategy, i.e., reversals and conversions, dividend spreads, and box spreads.

¹¹ Telephone conversation between Steven B. Matlin, Senior Counsel, PCX, and Steve L. Kuan, Attorney, Division of Market Regulation, Commission, on April 26, 2005.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,¹² in general, and Section 6(b)(4) of the Act,¹³ 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 believes that the proposed rule change, as amended, will not 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) of the Act¹⁴ and subparagraph (f)(2) of Rule 19b-4 thereunder¹⁵ because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of the 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.¹⁶

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(2).

¹⁶ For purposes 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 have commenced on April 26, 2005, the date the

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-2005-47 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-2005-47. 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 Exchange. All comments received will be posted without change; the Commission does not edit

Exchange filed Amendment No. 2 to the proposed rule change. See 15 U.S.C. 78s(b)(3)(C).

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-2005-47 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.¹⁷

Margaret H. McFarland
Deputy Secretary

¹⁷ 17 CFR 200.30–3(a)(12).