

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52371; File No. SR-PCX-2005-68)

August 31, 2005

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto to Modify Rate Schedule Retroactively to January 1, 2002 to Cap the Fees on Multiple Options Issues Transfers

On May 13, 2005, the Pacific Exchange, Inc. (“PCX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to modify its rate schedule retroactively to January 1, 2002 to cap the fees on multiple options issues transfers. The Exchange amended the proposal on July 1, 2005.<sup>3</sup> The proposed rule change, as amended, was published for notice and comment in the Federal Register on July 27, 2005.<sup>4</sup> The Commission did not receive comments on the proposal. This order approves the proposed rule change, as amended.

PCX proposes to cap the fees on multiple options issues transfers. Currently, PCX charges a Lead Market Maker (“LMM”) that has been allocated an options issue \$1,000 per issue if the LMM transfers the options issue to another LMM.<sup>5</sup> PCX originally adopted the fee to help offset its administrative and technological costs related to transferring an options issue. While PCX believes it is still accurate to charge \$1,000 for the transfer of one issue, when multiple

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

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

<sup>3</sup> Amendment No. 1 replaced and superseded the original proposal.

<sup>4</sup> See Securities Exchange Act Release No. 52090 (July 20, 2005), 70 FR 43492.

<sup>5</sup> According to PCX, options issue transfers are conducted in accordance with PCX Transfer of Issues Guidelines. See PCX Regulatory Information Bulletin RBO-03-09 (August 11, 2003).

issues are transferred as part of a single transaction, the overall costs of PCX associated with the transfer may be reduced. When multiple issues are transferred as part of a single transaction, PCX believes that charging the full \$1,000 on every transferred issue with no limit to the total charges is not the original intent of the transfer fee.

PCX proposes to continue charging \$1,000 per issue transferred, but cap the fee at \$15,000 for the first one hundred issues transferred, and \$5,000 for every one hundred (or any part of) additional issues transferred. To qualify for the rate cap, all transfers must be deemed to be part of a single transaction and meet the PCX Transfer of Issues Guidelines. The new fee cap would allow PCX to more accurately assess an LMM the technological and administrative costs associated with the transfer of allocated issues. PCX proposes to make this fee effective retroactive to January 1, 2002, the date the transfer fee was first effective, so that it would have the ability to make any adjustments it deems necessary to allow previous charges to properly reflect the true intent of the transfer fee. Further, PCX represented that it would review all past transfers to determine if any adjustments are warranted pursuant to the proposed rate schedule.

After careful review of the proposed rule change, as amended, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> Specifically, the Commission believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>7</sup> in that it provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members. The Commission believes that the proposal should allow the

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<sup>6</sup> In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

Exchange to more accurately charge LMMs the Exchange's true costs when multiple options issues are transferred. Further, the Commission believes that by making the proposal retroactive to January 1, 2002, the Exchange could make adjustments to past transfers in accordance with the original intent of the fee.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-PCX-2005-68) and Amendment No. 1 are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Jonathan G. Katz  
Secretary

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<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).