

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53165; File No. SR-PCX-2005-136)

January 20, 2006

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto 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 December 30, 2005, the Pacific Exchange, Inc. (“Exchange” or “PCX”) 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 PCX. On January 18, 2006, the PCX filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The PCX has designated this proposal as establishing or changing a due, fee, or other charge imposed by a self-regulatory organization 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.

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

The PCX proposes to amend its Schedule of Fees and Charges for option contracts. The text of the proposed rule change is available on the PCX Web site,

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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> In Amendment No. 1, the PCX made non-substantive changes to the text of the proposed rule change and made clarifying changes to the purpose section.

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

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

(<http://www.archipelago.com>), at the PCX's principal office, 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, the 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. 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

1. Purpose

The PCX charges transaction fees associated with all option contracts that are executed on the Exchange. Presently there are four categories of transaction fees included in the PCX Schedule of Rates and Charges: Customer, Firm, Broker/Dealer, and Market Maker. The current Firm transaction fee applies to OTP Firm<sup>6</sup> proprietary trades that have a customer of that firm on the contra side of the transaction. The Exchange offers this rate as an incentive to OTP Firms to direct their customer orders to PCX for execution. In the past, these transactions were brokered between an OTP Firm's proprietary trading account, which was an off-floor account, and the account of a customer of the same OTP Firm. Market Makers did not historically participate in these types of trades. With the changes in the structure of how OTP Firms conduct their business, many OTP Firms now have market making entities on the PCX. At present, the

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<sup>6</sup> An OTP Firm is defined in PCX Rule 1(r) as "a sole proprietorship, partnership, corporation, limited liability company or other organization in good standing who holds an OTP or upon whom an individual OTP Holder has conferred trading privileges on the Exchange's Trading Facilities...."

Exchange does not apply the Firm transaction fee to PCX Market Makers that transact with customers of that Market Maker's OTP Firm. The Exchange proposes to expand the application of the Firm transaction fee to PCX market maker accounts. In order to be consistent, the PCX proposes to apply the Firm transaction fee to all trades between an OTP Firm and a customer of the same OTP Firm, no matter what proprietary account the Firm uses to effect the trade. The Firm transaction fee will be assessed to market maker accounts in lieu of, not in addition to, the Market Maker fee presently charged. This will in effect offer a lower rate for market maker transactions when a Market Maker is trading with a customer of the Market Maker's OTP Firm. The Firm fee will apply only to accounts of Market Makers associated with OTP Holders or OTP Firms of the PCX.

Many OTP Firms operate as Market Makers on the PCX and, as such, trade with customers of their OTP Firm. By applying the Firm transaction fee to all transactions, including market maker accounts, involving an OTP Firm's customers, the PCX hopes to attract additional order flow, which in turn should create additional liquidity providing better markets for all trading participants. The Exchange intends to make the new fee effective as of January 3, 2006.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>8</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members. OTP Holders and OTP Firms are considered "members" of the Exchange under the Act.

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

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

The Exchange has neither solicited nor received comments on the proposed rule change.

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 Act<sup>9</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>10</sup> 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 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>11</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 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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> The effective date of the original proposed rule change is December 30, 2005, and the effective date of Amendment No. 1 is January 18, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on January 18, 2006, the date on which the PCX submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PCX-2005-136 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-PCX-2005-136. 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 the 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-2005-136 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>12</sup>

Nancy M. Morris  
Secretary

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