

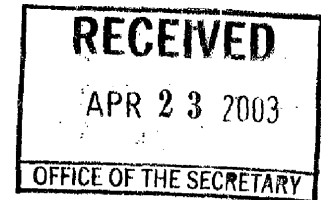
## Options Self Regulatory Council

Lawrence J. Bresnahan  
 Chairman  
 Options Self Regulatory Council

## Via Telefax and Express Mail

April 22, 2003

Mr. Jonathan G. Katz  
 Secretary  
 Securities and Exchange Commission  
 450 Fifth Street, N.W.  
 Washington, D.C. 20549



Re: SR-PCX-2003-03

The Options Self Regulatory Council' ("OSRC" or the "Council"), with the exception of the Pacific Exchange ("the Exchange") **welcomes** the opportunity to comment on File SR-PCX-2003-03 of the **Exchange, which proposes** to amend the **Exchange's** regulatory fee portion of its Schedule of Fees and Charges. Specifically, the Exchange has proposed the addition **of** a Designated Options Examining Authority ( "**DOEA** fee for member firms that conduct a public options business. This fee **would** be applicable **only** to member firms for which the **Exchange** is the DOEA and is intended to **recover** costs associated with conducting options sales practice examinations of its member firms that conduct public options business.

The Council **wishes to** correct an inaccuracy in the purpose clause regarding the allocation of costs. Specifically the PCX's proposed rule change states that "... the OSRC has **proposed** a means to allow for **an** allocation of regulatory costs incurred in fulfilling obligations under the agreement among **all** current and future DOEA **and** non-DOEA participants. As such, the OSRC has proposed to allocate a portion of the costs borne by the SROs based on **the** percentage of their overall expense **pool.**" It **also states** that: "**In the absence** of **any** PCX initiative, the Exchange will be allocated a certain portion of the DOEA costs borne by other SROs, which **would** increase the Exchange's overhead without cost recovery.

These statements are inaccurate. The 17d-2 Agreement by and among the members of the OSRC (the "Agreement") does not specify a **means** for the allocation of costs.<sup>2</sup> The Agreement allocates members firms among the Council members **based** upon common exchange (or **NASD**) **membership**.

<sup>1</sup> The Options Self Regulatory Council is comprised of representatives of the American Stock Exchange, Chicago Board Options Exchange, International Securities Exchange, NASD, New York Stock Exchange, Pacific Exchange and the Philadelphia Stock Exchange.

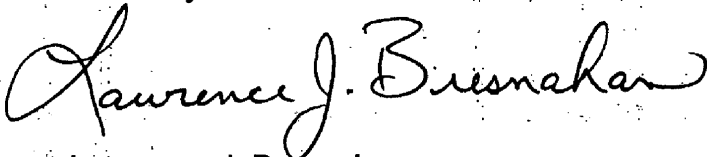
<sup>2</sup> SEC Release No. 34-46800; File No. S7-966 dated November 8, 2002.

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The Agreement does not require any **DOEA** to assume the costs, either in whole or in part, for another **DOEA's** options sales practice examination and investigation program allocated pursuant to the Agreement.

We believe that **the** inclusion by the **PCX** of the **language** noted above **was** inadvertent. Moreover, **we** note that this interpretation is not supported by the text of the Agreement or the **SEC's** approval order. Nevertheless, to avoid interpretative problems concerning the Agreement from arising in the future, we **request** that **the Commission** direct **PCX** to correct its **rule filing**. As an alternative, the Commission should note in its approval order that the OSRC commented on the proposed rule **change** in order to correct a misreading of the Agreement. **On** behalf of the Council, **if you would like** to **discuss** this letter, or have **any** related questions or **comments**, **please** contact Lawrence J. Bresnahan, **Vice** President, Financial and **Sales** Practice Compliance, Chicago Board **Options** Exchange at 312-786-7713.

Sincerely



Lawrence J. Bresnahan

cc: Katherine England, SEC  
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