

as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## V. 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2004-29 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-NYSE-2004-29. 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 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 NYSE. 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-NYSE-2004-29 and should be submitted on or before December 2, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated Authority.<sup>8</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50527; File No. SR-PCX-2004-92]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Options Floor Access Fee and the Remote Market Maker Access Fee

October 13, 2004.

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 October 1, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The PCX proposes to make a clarifying change to the PCX Schedule of Fees and Charges ("Schedule") with respect to the Options Floor Access Fee and the Remote Market Maker Access Fee. The text of the proposed rule change is available at the Office of the Secretary, the 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 self-regulatory organization 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 self-regulatory organization 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 make a clarifying change to the Schedule with respect to its Options Floor Access Fee and its Remote Market Maker Access Fee. Currently, all registered floor personnel (including Lead Market Makers, Floor Market Makers, etc.) are assessed a monthly fee of \$130 for access to the Exchange with a cap of \$5,000 per month per Firm. Remote Market Makers are also assessed an identical fee for their access to the Exchange. Hence, whether a Remote Market Maker accesses the Exchange from the trading floor or from off the trading floor, such Remote Market Maker is assessed one access fee of \$130 per month. Since the fees are identical, the Exchange proposes to combine the two fees into one and name it "Options Access Fee." The Exchange believes that combining the two access fees will provide greater clarity and simplify the rate schedule.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>3</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>4</sup> in particular, because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members, issuers and other persons using its facilities.

#### 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.

<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(4). At the request of the PCX, the Commission staff corrected the statutory basis provided in the original filing from Section 6(b)(5) to Section 6(b)(4) of the Act. Telephone conversation between Tania J.C. Blanford, Staff Attorney, PCX and Jennifer C. Dodd, Attorney, Division of Market Regulation, Commission on October 12, 2004.

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

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

*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)(ii) of the Act<sup>5</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>6</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.

**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 [rules-comments@sec.gov](mailto:rules-comments@sec.gov). Please include File Number SR-PCX-2004-92 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathon G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-PCX-2004-92. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also 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 No. SR-PCX-2004-92 and should be submitted on or before November 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-50523; File No. SR-PCX-2004-94]**

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to a Delay of the Operative Period for Priority and Order Allocation Procedures for PCX Plus**

October 13, 2004.

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 October 1, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") 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 Exchange. The PCX has designated this proposal as one concerned solely with the administration of the Exchange under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(3) thereunder,<sup>4</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 from interested persons.

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

The PCX proposes to delay the operative date of recent amendments to PCX Rule 6.76 (Priority and Allocation Procedures of PCX Plus)<sup>5</sup> until on or before November 10, 2004.

**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 Commission recently approved a rule proposal by the Exchange to amend PCX Rule 6.76(b).<sup>6</sup> The PCX states that the amended rules give PCX Market Makers the same access to the Consolidated Book that a Firm or Non-OTP Holder Market Maker<sup>7</sup> has. The Exchange believes that this rule amendment eliminates any potential biases that a PCX Market Maker may encounter when using PCX Plus. The approved rule also eliminates the Electronic Book Execution rules set forth in PCX Rule 6.76(b)(4) that prevents PCX Market Makers from immediately executing orders against the Consolidated Book.

The Exchange now seeks to delay the operative period of that rule until on or before November 10, 2004 so that the Exchange may give notice to its OTP Holders and OTP Firms of the approval

<sup>5</sup> See Securities Exchange Act Release No. 50430 (September 23, 2004), 69 FR 58210 (September 29, 2004).

<sup>6</sup> See Securities Exchange Act Release No. 50430 (September 23, 2004), 69 FR 58210 (September 29, 2004).

<sup>7</sup> The term "Non-OTP Holder Market Maker" includes, but is not limited to, specialists, designated primary market makers, lead market makers, market makers, registered options traders, primary market makers and competitive market makers registered on an exchange other than the PCX. See PCX Rule 6.1(b)(35).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(3).