

of a member or member organization, customers affected by the conflicting California Standards may elect to either have the arbitration hearing in another state, or waive the California Standards and have the hearing in California. The customer's waiver operates to waive the California Standards for any other party who is a member, allied member, member organization, and/or associated person of a member or member organization. Under the proposed amendment, the Exchange would also offer the waiver option to an associated person of a member or member organization who asserts a claim against the member or member organization with which she or he is associated. The Exchange is proposing that Rule 600(g) be adopted as a six-month pilot amendment, from November 12, 2002 to May 12, 2003,<sup>7</sup> during which period the Exchange's Director of Arbitration will monitor the progress of the above-described litigation and determine whether there is a continuing need for the waiver option.

Customers or associated persons who requested, between July 1, 2002 and the effective date of this proposed rule, that a hearing be held outside of California, but have not had arbitrators appointed, may choose to sign the waiver, which will void their previous request for a hearing outside of California. Customers or associated persons who elect, after the effective date of this proposed rule, to have a hearing held outside of California may not subsequently rescind that choice.

The Exchange will notify parties (and their representatives, if any) who currently are awaiting the appointment of arbitrators in California of the terms of this new rule upon its approval by the Commission, and will provide them with the waiver forms.

## 2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of section 6(b)(5) of the Act,<sup>8</sup> in that they promote just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

<sup>7</sup> The Commission adjusted the proposed pilot period based on the date that the Commission approved the proposed rule change. Telephone conversation between Robert S. Clemente, Director of Arbitration, NYSE, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, (November 8, 2002).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The NYSE 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*

No written comments were solicited or received with respect to the proposed rule change.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of NYSE. All submissions should refer to File No. NYSE-2002-56 and should be submitted by December 10, 2002.

## IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, 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, and, in particular, the requirements of section 6 of the Act.<sup>9</sup> Specifically, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, as well as to remove impediments to and perfect the mechanism of a free and open market, and, in general, to

<sup>9</sup> In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

protect investors and the public interest.<sup>10</sup> The Commission further finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. Accelerated approval is necessary to protect investors in that the rules are designed to help address the backlog of cases created by the confusion over the new California Standards, are designed to provide them with a mechanism to help resolve their disputes with broker-dealers in a more expedited manner, and are designed to help ensure the certainty and finality of arbitration awards. Additionally, the proposed rule change will become effective as a pilot program for six months, from November 12, 2002 to May 12, 2003, during which time the Commission and NYSE will monitor the status of the previously discussed litigation.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-NYSE-2002-56) is hereby approved on an accelerated basis through May 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46805; File No. SR-PCX-2002-62]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc., to Amend the PCX's Market Data Revenue Sharing Program for Tape A Securities Traded on the Archipelago Exchange**

November 8, 2002.

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 4, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary, PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</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.

III below, which Items have been prepared by PCXE. 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, through PCXE, proposes to modify its market data revenue sharing program for Tape A securities traded on the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE. The text of the proposed rule change is available at 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 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 PCX proposes to amend its fee schedule for services provided to ETP Holders<sup>3</sup> and Sponsored Participants<sup>4</sup> (collectively "Users") on the ArcaEx by increasing the level of the transaction credits paid to Users with respect to transactions in issues listed on the New York Stock Exchange ("Tape A" securities) that are traded on ArcaEx.

#### Background

On May 28, 2002, the Exchange filed with the Commission a proposed rule change to implement, on a pilot basis through June 28, 2002, a mechanism for sharing market data revenue with Users on ArcaEx.<sup>5</sup> The proposed rule change was effective upon filing, and the PCXE implemented the program on June 1, 2002. On June 27, 2002, the Exchange filed with the Commission a proposed

rule change to extend the market data revenue pilot program through August 30, 2002.<sup>6</sup> On July 2, 2002, the Commission summarily abrogated the PCX's proposed rule change and certain proposed rule changes of the National Association of Securities Dealers, Inc. and the Cincinnati Stock Exchange relating to market data revenue sharing.<sup>7</sup> Accordingly, on July 9, 2002, the PCX filed with the Commission a proposed rule change to reinstate its market data revenue sharing program, and to reduce the level of the transaction credits paid to Users with respect to transactions in issues listed on the American Stock Exchange ("Tape B" securities).<sup>8</sup> On August 6, 2002, the PCX filed a similar proposed rule change to reinstate its market data revenue sharing program for Tape A securities.<sup>9</sup> Both SR-PCX-2002-42 and SR-PCX-2002-56 were effective upon filing with the Commission. The PCX subsequently amended its Tape A revenue sharing program on September 30, 2002, reducing the transaction credits from 50% to 40% per qualifying transaction.<sup>10</sup>

With the instant proposed rule change, the Exchange proposes to modify its Tape A market data revenue sharing program by increasing the level of the transaction credits paid to Users with respect to transactions in such securities from 40% to 50%. No other changes are proposed at this time.

#### Summary of Proposed Changes

Under the current market data revenue sharing program for Tape A securities, the Exchange shares 40% of its gross revenues derived from related market data fees with (i) any User that provides liquidity in a Tape A security by entering a resting limit order into the ArcaEx Book that is then executed against an incoming marketable order within the Display Order, Working Order, or Tracking Order processes; (ii) any Market Maker that executes against a Directed Order in a Tape A security within the Directed Order Process;<sup>11</sup>

<sup>6</sup> See SR-PCX-2002-37.

<sup>7</sup> See Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002) (File Nos. SR-PCX-2002-37, SR-NASD-2002-61, SR-NASD-2002-68, and Sr-CSE-2002-06) (Order of Summary Abrogation).

<sup>8</sup> See Securities Exchange Act Release No. 46293 (August 1, 2002), 67 FR 51314 (August 7, 2002) (SR-PCX-2002-42).

<sup>9</sup> See File No. SR-PCX-2002-56.

<sup>10</sup> See File No. SR-PCX-2002-61.

<sup>11</sup> The Directed Order Process is the first step in the ArcaEx execution algorithm. Through this Process, Users may direct an order to a Market Maker with whom they have a relationship and the Market Maker may execute the order. To access this process, the User must submit a Directed Order, which is a market or limit order to buy or sell that has been directed to the particular market maker by

and (iii) any User that represents all of one side and all or a portion of the other side of a Cross Order<sup>12</sup> execution in a Tape A security. The Exchange is seeking to increase the level of the transaction credits from 40% to 50% (per qualifying transaction) that will be paid to a User that meets the requirements stated above. The proposed increase in the Tape A revenue credit is intended to create additional incentives to market participants to provide liquidity on the ArcaEx facility.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b)<sup>13</sup> of the Act, in general, and furthers the objectives of section 6(b)(5),<sup>14</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

The Exchange also believes that the proposal is consistent with section 6(b)(4)<sup>15</sup> of the Act, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

#### 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

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such

the User. See PCXE Rule 7.37(a) (description of "Directed Order Process").

<sup>12</sup> A Cross Order is defined as a two-sided order with instructions to match the identified buy-side with the identified sell-side at a specified price (the cross price), subject to price improvement requirements. See PCXE Rule 7.31(s).

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4).

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

<sup>3</sup> See PCXE Rule 1.1(n).

<sup>4</sup> A "Sponsored Participant" is "a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to (PCXE) Rule 7.29." See PCXE Rule 1.1(tt).

<sup>5</sup> See Securities Exchange Act Release No. 46070 (June 12, 2002), 67 FR 42089 (June 20, 2002) (SR-PCX-2002-28).

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PCX consents, the Commission will:

- A. By order approve such proposed rule change, or
- B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

On July 2, 2002, the Commission issued an Order abrogating certain proposed rule changes relating to market data revenue sharing programs.<sup>16</sup> In that Order, the Commission expressed concern that the subject proposed rule changes raised “serious questions as to whether they are consistent with the Act and with the protection of investors.” Specifically, the Commission questioned the effect of market data rebates on the accuracy of market data, and on the regulatory functions of self-regulatory organizations.

The Commission now solicits comment on the instant proposed rule change, and in general, on (1) market data fees; (2) the collection of market data fees; (3) the distribution of market data rebates; (4) the effect of market data revenue sharing programs on the accuracy of market data; and (5) the impact of market data revenue sharing programs on the regulatory functions of self-regulatory organizations.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six

copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR-PCX-2002-62, and should be submitted by December 10, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

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

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-46804; File No. SR-PCX-2002-65]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges**

November 8, 2002.

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 September 27, 2002, the Pacific Exchange, Inc. (“PCX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which the PCX has prepared. The PCX filed Amendment No. 1, which replaces the original filing in its entirety, on November 7, 2002. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change, as amended.

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

The PCX is proposing to amend its Schedule of Fees and Charges with respect to the following fees for options: broker-dealer and market maker transaction charges, the continued listings fee, and the shortfall fee. The text of the proposed rule change is below. New text is italicized; deleted text is in brackets.

**SCHEDULE OF FEES AND CHARGES FOR EXCHANGE SERVICES**

PCX Options: Trade-Related Charges	
Transactions:	
Customer .....	\$0.00 per contract side.
PCX Market Maker .....	\$0.21 per contract side.
Firm .....	\$0.10 per contract side for customer facilitation.
Broker/Dealer .....	[\$0.19] \$0.21 per contract side.
PCX Options: Floor and Market Maker Fees	
Continued Listings Fee .....	Difference between \$500 and average monthly revenue for issues with less than \$500 in volume based charges (average monthly revenue based on trailing 3 months). <i>The fee will be capped at \$15,000 per month per LLM firm.</i>
Shortfall Fee .....	\$.35 per contract on shortfall volume.*

• Only applies to the top 120 options. Shortfall volume is the difference between 12% of the total national

market share in an option issue for one month and the percentage executed by the LMM. *For the purpose of this*

*calculation, the national market share of any equity option industry volume*

<sup>16</sup> Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002)(File Nos. SR-NASD-2002-61, SR-NASD-2002-68, SR-CSE-

2002-06, and SR-PCX-2002-37) (Order of Summary Abrogation).

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

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

<sup>2</sup> 217 CFR 240.19b-4.