decided by an arbitration panel.'' [51] The Commission reiterates that it is not approving the 2001 Agreement.[52]

IV. Conclusion

The Commission received two requests for the Commission to extend the comment period for this proposed rule change. The reasons for these requests were for ''additional time to study and comment on the April 18th release as it pertains to these rule filings,'' [53] and to permit the public time to submit comments in response to the CBOE's May 6, 2005 letter filed in response to the two earlier comment letters.[54] The proposed rule change was publicly available on March 7, 2005 when the CBOE filed it. On April 7, 2005, the proposal was published in the **Federal Register** along with Amendment No. 1, which included a technical amendment and the opinion letter from CBOE's Delaware counsel.[55] The Commission sees no reason to delay action on the CBOE's current proposed rule change to accommodate commenters' review of the Commission's order denying reconsideration of a separate filing. In addition, the Commission believes that the public has had sufficient time to review the substance of the CBOE's proposed rule change and provide the Commission with comments.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) of the Exchange Act.[56]

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[57] that the proposed rule change (SR–CBOE–2005–19), as amended, be, and it hereby is, approved.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–2717 Filed 5–27–05; 8:45 am]

BILLING CODE 8010–01–P

[51] Joint Letter, *supra* note 5, at 1–2.

[52] If the CBOE comes to believe that any of the conditions in the 2001 Agreement, as amended, are no longer satisfied by the CBOT or CBOT Holdings, Inc. such that the interpretation the Commission is today approving is no longer proper, the CBOE would be required to file with the Commission any subsequent interpretation of Article Fifth(b).

[53] Joint Letter, *supra* note 5, at 7. *See also* Securities Exchange Act Release No. 51568 (Apr. 18, 2005), 70 FR 20953 (Apr. 22, 2005) (order denying motion for reconsideration of the Commission's order approving SR–CBOE–2004–16).

[54] *See* Mills Letter, *supra* note 9.

[55] *See supra* note 3.

[56] 15 U.S.C. 78f(b)(5).

[57] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51729; File No. SR–NYSE–2004–57]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments No. 1 and No. 2 Thereto Relating to Member Organization Increases in Arbitration Filing Fees and Member Organization Surcharges in Arbitration Claims Filed by Customers

May 24, 2005.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Exchange Act''), and Rule 19b–4 [2] thereunder, notice is hereby given that on October 12, 2004 and on April 4, 2005 (Amendment No. 1) and on April 11, 2005 (Amendment No. 2), the New York Stock Exchange, Inc. (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. For the purposes of Section 19(b)(3)(A)(ii) of the Exchange Act [3] and Rule 19b–4(f)(2) thereunder,[4] NYSE has designated the proposed rule change as one establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on its members, 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 proposed rule change consists of amendments to Rule 629 concerning arbitration filing fees and hearing deposits, and the imposition of member organization surcharges pertaining to arbitration claims. Below is the text of the proposed rule change to Rule 629. Proposed new language is in italics; proposed deletions are in brackets.

Rule 629 Schedule of Fees

* * * * *

(c)*(1)* The arbitrators, in their award, may determine the amount chargeable to the parties as forum fees and shall determine who shall pay such forum fees. Forum fees chargeable to the parties shall be assessed on a per hearing session basis and the aggregate for each hearing session may equal but shall not exceed the amount of the largest initial hearing deposit deposited by any party. [,e] Except *that* in a case where claims have been joined subsequent to filing [in which cases hearing session], *forum* fees *for any party other than a customer* shall be computed as provided in paragraph (d)*, and forum fees for a customer in connection with any industry claim shall be computed as provided in this paragraph (c)(1).* [The arbitrators may determine in the award that a party shall reimburse to another party any non-refundable filing fee it has paid.]

If a customer is assessed forum fees in connection with an industry claim, [forum fees assessed against] the customer*'s forum fees* shall be based on the [hearing deposit required under the industry claims schedule for the] *total* amount awarded to industry parties to be paid by the customer and not based on the size of the industry claim. *The maximum fee per session for purposes of calculating any forum fees that may be assessed against the customer in connection with an industry claim shall be:*

Amount of award (excluding interest expenses)	*Maximum per-session customer fee amount*
$25,001 to $100,000	*$600*
$100,001 to $500,000	*750*
$500,001 to $5,000,000	*1,000*
Over $5,000,000	*1,500*

(c)(2) The arbitrators, in their award, may determine that a party shall reimburse to another party any non-refundable filing fee it has paid; any such filing fee assessed against a customer in connection with an industry claim shall not exceed $500.00.

No fees shall be assessed against a customer in connection with an industry claim that is dismissed; however, in cases where there is also a customer claim, the customer may be assessed forum fees based on the customer claim under the procedure set out above. Amounts deposited by a party as hearing deposits shall be applied against forum fees, if any.

In addition to forum fees, the arbitrator(s) may determine in the award the amount of costs incurred pursuant to Rules 617, 619 and 623 and, unless applicable law directs otherwise, other costs and expenses of the parties. The arbitrator(s) shall determine by whom such costs shall be borne[.]*, provided that the following schedule of hearing deposits shall be used to calculate any*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

costs assessable against the customer pursuant to Rule 617 in connection with an industry claim.

Amount of dispute (excluding interest expenses)	*Hearing deposit*
$25,001 to $100,000	*$600*
$100,001 to $500,000	*750*
$500,001 to $5,000,000	*1,000*
Over $5,000,000	*1,500*

If the [hearing session] *forum* fees are not assessed against a party who had made a hearing deposit, the hearing deposit will be refunded unless the arbitrators determine [otherwise] *that a hearing deposit paid by a party other than a customer should not be refunded. In no event shall the arbitrators determine not to refund a hearing deposit to a customer against whom forum fees are not assessed.*

* * * * *

(e) If the dispute, claim or controversy does not involve, disclose or specify a money claim, the non-refundable filing fee for a public customer will be $250 and *the* non-refundable filing fee for an industry party shall be $500. The hearing session deposit to be remitted by a party shall be $600 or such greater or lesser amounts as the Director of Arbitration or the panel of arbitrators may require, but shall not exceed $1,500.

* * * * *

(h) The fee for a pre-hearing conference with an arbitrator shall be:

SCHEDULE FOR PRE-HEARING CONFERENCE WITH ONE ARBITRATOR [1]

Amount in controversy	Conference fee	
	For customers	*For industry*
$1,000 or less	$15.00	$*25.00*
$1,001 up to $2,500	25.00	*50.00*
$2,501 up to $5,000	100.00	*125.00*
$5,001 up to $10,000	200.00	*250.00*
$10,001 up to $25,000	300.00	*300.00*
Over $25,000	450.00	*450.00*

[1] Fee for pre-hearing conference with three arbitrators shall be based on applicable hearing session deposit fee.

(i) Schedule of Fees.

For purposes of the schedule of fees the term ''claim'' includes Claims, Counterclaims, Third-Party Claims or Cross-Claims. Any such claim submitted by a customer is a customer claim. Any such claim submitted by a member, allied member, registered representative, member firm or member corporation against a customer or other non-member is an industry claim.

For claims of $25,000 or less see schedule of fees in Rule 601 Simplified Arbitration.

CUSTER AS CLAIMANT

Amount of dispute (excluding interest and expenses)	Filing fee	Hearing deposit
$25,001 to $50,000	$120	$400
$50,001 to $100,000	150	500
$100,001 to $500,000	200	750
$500,001 to $5,000,000	250	1,000
Over $5,000,000	300	1,500

INDUSTRY AS CLAIMANT*

Amount of dispute (excluding interest expenses)	Filing fee	*Industry* hearing deposit 3 Arbs.	*Customer hearing deposit* 3 Arbs.
$25,001 to $100,000	$[500] *1,000*	$[600] *750*	*$600*
$100,001 to $500,000	[500] *1,000*	[750] *1,125*	*750*
$500,001 to $5,000,000	[500] *1,500*	[1,000] *1,200*	*1000*
Over $5,000,000	[500]	[1,500]	*1500*
$5,000,001 to $10,000,000	*2,500*	*1,500*	
Over $10,000,000	*5,000*	*1,500*	

* This is the fee schedule for claims submitted by members, member firms, member corporations or allied members against members, member firms, member corporations or allied members, customers, registered representatives or non-members other than customers, and for claims submitted by registered representatives or non-members other than customers against members, member firms, member corporations, allied members or non-members.

(j) Member Surcharges

Each member, member firm, member corporation or allied member (hereinafter referred to as any ''entity'') that is named as a party to an arbitration proceeding, whether in a Claim, Counterclaim, Cross-Claim or Third-Party Claim, shall be assessed a member surcharge pursuant to the schedule below upon receipt of the claim naming such entity as a party to the proceeding. For each associated person who is named, the member surcharge shall be assessed against the entity or entities that employed the associated person at the time of the events which gave rise to the dispute, claim or controversy. No entity shall be assessed more than a single member surcharge in any arbitration proceeding. The member surcharge will be refunded by the Exchange in an arbitration filed by a customer if the arbitration panel: (1) denies all of a customer's claims against the entity or associated person, and (2) allocates all forum fees assessed pursuant to Rules 601 and 629 against the customer.

Amount in Dispute	*Member Surcharge*
Up to $2,500	*$150*
$2,501 to $5,000	*200*
$5,001 to $10,000	*325*
$10,001 to $25,000	*425*
$25,001 to $30,000	*600*
$30,001 to $50,000	*875*
$50,001 to $100,000	*1,100*
$100,001 to $500,000	*1,700*
$500,001 to $1,000,000	*2,250*
$1,000,001 to $5,000,000	*2,800*
$5,000,001 to $10,000,000	*3,350*
Over $10,000,000	*3,750*

If the dispute, claim or controversy does not involve, disclose, or specify a monetary claim, the member surcharge shall be $1,500 or such greater or lesser amount as the Director of Arbitration or the panel of arbitrators may require, but shall not exceed the maximum amount specified in the schedule of member surcharges.

* * * * *

A. 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.

1. Purpose

The proposed rule change would raise existing fees associated with filing arbitration claims for member organizations and associated persons, and would impose a new surcharge on member organizations that are the subject of arbitration claims, or whose associated person(s) are the subject of such claims. Under the proposed rule change, filing fees and hearing deposits would be increased only for cases initiated by members and member organizations, and the filing fees and hearing deposits for claims initiated by public customers would not be increased.

When a party files an arbitration claim at the Exchange, a non-refundable filing fee and a hearing deposit is required. Fees are also required when filing counterclaims, cross-claims and third party claims. The amount of the fee and deposit varies based on the amount in dispute. At the conclusion of the hearings, the arbitrators assess forum fees against the claimant(s) or respondent(s), or both. The forum fees are computed by multiplying the total number of hearing sessions by the initial hearing deposit. These fees are payable to the Exchange and offset the cost of maintaining the arbitration forum.

As the arbitration caseload has increased significantly over the past several years, the attendant costs to the Exchange in maintaining the arbitration forum have also increased. This fee increase will offset a portion of those increased costs.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(4)[5] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members 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 not necessary or appropriate in furtherance of the purposes of the Exchange Act.

[5] 15 U.S.C. 78f(b)(4).

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 written 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)(ii)[6] of the Exchange Act and Rule 19b–4(f)(2)[7] thereunder, in that it establishes or changes a due, fee, or other charge imposed by the Exchange on its members. At any time within 60 days of the filing of this 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 Exchange Act.[8]

IV. 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 Exchange 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2004–57 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–2004–57. 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 such filing will also 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–2004–57 and should be submitted by June 21, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–2723 Filed 5–27–05; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on April 11, 2005, when Amendment No. 2 was filed.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51723; File No. SR–PCX–2005–52]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments No. 1 and 2 Thereto Making Certain Administrative Changes to the PCX Rules

May 20, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 12, 2005, 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 PCX. On May 5, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On May 9, 2005, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange corrected typographical errors and made clarifying changes to the proposed rule text. Amendment No. 1 superseded and replaced the original proposed rule change in its entirety. Telephone Conference on May 19, 2005 between Tania Blanford, Regulatory