

the Act,<sup>12</sup> which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the procedures to hear denial of access complaints would maintain the integrity of the ADF and provide a fair process for review.

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

NASD does not believe that the proposed rule change, as amended, would result in 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 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 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 such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

### **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 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2004-159 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-NASD-2004-159. 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 NASD. 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-NASD-2004-159 and should be submitted on or before February 25, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51102; File No. SR-PCX-2004-118]

#### **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 Arbitration Fees**

January 28, 2005.

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

2, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On January 28, 2005, the Exchange filed Amendment No. 1 to the proposed rule change. 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**

PCX is proposing to amend the PCX Options and PCX Equities, Inc. arbitration fees ("Options Fees" and "PCXE Fees," respectively) with respect to fees that only affect OTP Holders and OTP Firms<sup>3</sup> and ETP Holders.<sup>4</sup> The text of the proposed rule change is available on the PCX Web site (<http://www.pacificex.com/legal/docs/prf/2004/SR-PCX-2004-118.pdf>), at the principal office of the PCX, and in 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 Exchange included statements concerning the purpose of and basis for 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*

##### *Purpose*

The Exchange proposes to amend its arbitration fees with respect to OTP Holders and Firms and ETP Holders to increase and, in some instances, add arbitration-related fees. The proposed amendments are based on the National Association of Securities Dealers' ("NASD's") arbitration fees.

The Exchange's arbitration program offers a comparable level of service to that of the NASD and is one of the competing forums for securities arbitration. The Exchange sought to amend its fees in 2002,<sup>5</sup> but due to the

<sup>13</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> See PCX Rule 1(q)-(r).

<sup>4</sup> See PCXE Rule 1(n).

<sup>5</sup> See SR-PCX-2002-45.

<sup>12</sup> 15 U.S.C. 78o-3(b)(6).

uncertainty of arbitration programs in California, the Exchange withdrew the filing and retained its then-current fee structure. As a result, the Exchange's arbitration fees remain deficient as compared to the fees that other self-regulatory organizations charge for arbitration. Thus, the Exchange proposes to modify its fees with respect to OTP Holders and OTP Firms and ETP Holders in order to bring its fees in line with competing forums as well as recover costs associated with the PCX arbitration program.

#### 1. OTP Firm or OTP Holder Controversies/ETP Controversies

The Exchange proposes to amend the fee schedules applicable to "OTP Firm or OTP Holder Controversies" under PCX Rule 12.31 for the Options Fees and "ETP Holder Controversies" under PCXE Rule 12.32 for the PCXE Fees. These fee schedules apply to cases that are between OTP Holders and Firms or associated persons thereof, or between ETP Holders or associated persons thereof. The Exchange proposes to modify the required fee for the Amount in Dispute, Filing Fee, Simplified (No Hearing) Fee, and the Hearing Session Deposit. These fee modifications are identical to the current fees imposed at the NASD.<sup>6</sup>

#### 2. Pre-Hearing and Hearing Process Fees

The Exchange proposes new PCX Rule 12.33 and new PCXE Rule 12.32(k) to adopt pre-hearing and hearing process fees that mirror the fees charged by the NASD.<sup>7</sup> The Exchange proposes that each OTP Holder, OTP Firm, or ETP Holder that is a party to an arbitration proceeding in which more than \$25,000 is in dispute pay a non-refundable pre-hearing process fee of \$750, due at the time the parties are sent notification of the arbitration panel. Thereafter, a non-refundable hearing process fee will be due when the parties are notified of the date and location of the first hearing session in accordance with the proposed hearing process fee schedule. If an associated person of an OTP Holder, OTP Firm or ETP Holder is a party, the OTP Holder, OTP Firm, or the ETP Holder that employed the associated person at the time of the events which gave rise to the dispute, claim or controversy will be charged the process fees, even if the OTP Holder, OTP Firm, or ETP Holder is not a party.

These processing fees will bring revenue to the Exchange and compensate the Exchange at an earlier stage of the arbitration process. The

processing fees are particularly important because much of the time and money spent by the Exchange to administer cases is required during the first months of the arbitration process.

#### 3. Surcharge

The Exchange proposes to amend PCX Rule 12.32(c) and PCXE Rule 12.33(c) in order to modify the OTP Holder/OTP Firm Surcharge and ETP Holder Surcharge, respectively. The surcharge will continue to be based on the amount in dispute. The Exchange proposes to amend PCX Rule 12.32(a) and PCXE Rule 12.33(a) to provide that these surcharges may be refundable in an arbitration filed by a customer if the arbitration panel: (1) Denies all of the customer's claims against the OTP Holder, OTP Firm, ETP Holder, or associated person, and (2) allocates all forum fees assessed pursuant to PCX Rule 12.31 or PCXE Rule 12.32 against the customer. The Director may also refund or cancel the OTP Holder/OTP Firm Surcharge or the ETP Holder Surcharge in other extraordinary circumstances. The Exchange believes it is appropriate to modify the surcharge in order to bring the surcharge up to date and ensure sufficient cost recovery associated with the PCX arbitration program.

#### Basis

The Exchange believes that the proposal is consistent with Section 6(b)<sup>8</sup> of the Act, in general, and Section 6(b)(4)<sup>9</sup> of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among the Exchange's OTP Holders, OTP Firms, ETP Holders, and other persons using the Exchange's 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.

#### 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A)<sup>10</sup> of the Act and subparagraph (f) of Rule 19b-4 thereunder,<sup>11</sup> because the proposed rule change establishes or changes a due, fee, or other charge applicable only to a member of 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 purpose of the Act.<sup>12</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, 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 No. SR-PCX-2004-118 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 No. SR-PCX-2004-118. 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

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f).

<sup>12</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on January 28, 2005, the date on which the Exchange filed Amendment No. 1 to the proposed rule change. See 15 U.S.C. 78s(b)(3)(C).

<sup>6</sup> See NASD Rule 10205(k).

<sup>7</sup> See NASD Rule 10333(b).

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

<sup>9</sup> 15 U.S.C. 78f(b)(4).

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 20549-0609. 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-2004-118 and should be submitted on or before February 25, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Request for Public Comment Regarding Andean Trade Promotion and Drug Eradication Act (ATPDEA) Beneficiary Countries

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** In compliance with section 203(f) of the Andean Trade Preference Act (ATPA) (19 U.S.C. 3201), as amended by the Andean Trade Promotion and Drug Eradication Act, the Office of the United States Trade Representative (USTR) is requesting the views of interested parties on whether the countries designated as ATPA beneficiary countries in Presidential Proclamation 7616 of October 31, 2002, are meeting the eligibility criteria provided for in section 204(b)(6)(B) of the ATPA. This information will be used in the preparation of a report to the U.S. Congress on the operation of the program.

**DATES:** Public comments are due at USTR no later than 5 p.m., March 18, 2005.

**ADDRESSES:** *Submissions by electronic mail:* FR0518@USTR.EOP.GOV.

*Submissions by facsimile:* Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395-6143. The public is strongly encouraged to submit documents electronically rather than by facsimile. See requirements for submissions below.

**FOR FURTHER INFORMATION CONTACT:**

Russell Smith, Office of the Americas, Office of the United States Trade Representative, 600 17th Street, NW., Room 523, Washington, DC 20508. The telephone number is (202) 395-9450.

**SUPPLEMENTARY INFORMATION:** Signed into law on August 6, 2002, the Trade Act of 2002 contains, in title XXXI, provisions for enhanced trade benefits for eligible Andean countries. Titled the "Andean Trade Promotion and Drug Eradication Act" (ATPDEA), the ATPDEA renews the Andean Trade Preference Act (ATPA), and amends the ATPA to provide preferential treatment for certain products previously excluded from such treatment. In Presidential Proclamation 7616 of October 31, 2002, the President designated Bolivia, Colombia, Ecuador and Peru as ATPA beneficiary countries. Section 203(f) of the ATPA requires the USTR, not later than April 30, 2005, to submit to Congress a report on the operation of the ATPA. Section 203(f)(2) requires USTR, before submitting such report, to request comments on whether beneficiary countries are meeting the criteria set forth in section 204(b)(6)(B) (which incorporates by reference the criteria set forth in sections 203(c) and (d)). USTR refers interested parties to the **Federal Register** notice published on August 15, 2002 (67 FR 53379), for a full list of the eligibility criteria.

*Requirements for Submissions.* In order to facilitate prompt processing of submissions, the Office of the United States Trade Representative strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: "ATPA Beneficiary Countries." Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Spreadsheets submitted as supporting documentation are acceptable as Quattro Pro or Excel files. If any document submitted electronically contains business confidential information, the file name of the business confidential version should begin with the characters "BC-," and the file name of the public version should begin with the characters "P-." The "P-" or "BC-" should be followed

by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments, notice of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395-6186.

**Carmen Suro-Bredie,**

*Chairman, Trade Policy Staff Committee.*

[FR Doc. 05-2188 Filed 2-3-05; 8:45 am]

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Notice of List of Products Subject to Possible Withdrawal of Concessions in Response to European Union (EU) Changes to Its Rice Import Regime

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice.

**SUMMARY:** In response to the European Union's changes to its rice import regime, the United States has notified the World Trade Organization of its intent to withdraw concessions by March 1, 2005, with respect to the goods in the attached list.

*Background:* In **Federal Register** notices 04-20543, dated September 10, 2004, 04-21762 and dated September 28, 2004, the Office of the U.S. Trade Representative sought comments concerning a list of goods for which tariff concessions may be withdrawn and duties may be increased in the

<sup>13</sup> 17 CFR 200.30-3(a)(12).