

have been prepared by the PCX.³ On February 28, 2003, PCX submitted Amendment No. 1 to the proposed rule change.⁴ 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 is proposing to change its marketing fee for certain options and to adopt new marketing fees for recently listed options. The text of the proposed rule change is available at the principal offices of 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 PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had 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 PCX recently adopted a payment-for-order-flow program under which it charges a marketing fee ranging from \$0 to \$1.00 per contract on a per-issue basis.⁵ The PCX segregates the funds from this fee by trading post and makes the funds available to Lead Market Makers ("LMMs") for their use in attracting orders in the options traded at the posts. The PCX charges the

marketing fees as set forth in its Schedule of Marketing Charges.

The PCX is proposing to change the marketing fee for certain options as set forth in the Schedule of Marketing Charges beginning at the commencement of the March trade month and continuing until further notice. The PCX proposes to change only the amounts of the fees that it charges for transactions in the options that are included in the proposed Schedule of Marketing Charges.⁶ Any fees currently being charged for transactions in options that are not listed in this amendment to the Schedule of Marketing Charges would not be affected by the proposed rule change. The PCX believes that its proposed rule change is reasonable and equitable because it is designed to enable the PCX to compete with other markets in attracting options business.

The PCX's marketing fee program applies only to option issues classified by the PCX as a Top 250 issue. The PCX defines a Top 250 issue as one of the 250 most actively traded option issues on a national basis. For each current month, the PCX's determination of whether an equity option ranks in the top 250 most active issues will be based on volume statistics for the three calendar months of trading activity beginning four months prior to the current month.

2. Statutory Basis

The PCX believes that its proposal to amend its schedule of dues, fees and charges is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act⁸ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among PCX members.

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

The PCX 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.

⁶ The Commission notes that the PCX payment-for-order-flow program applies only to Top 250 issues. For purposes of the payment-for-order-flow program, the PCX recalculates the Top 250 issues quarterly, based upon volume statistics for the three-month period that began four months earlier. The PCX has updated its Schedule of Marketing Charges to identify the changes to the marketing fees that the PCX is charging for the March, April, and May 2003 trading months, as part of its payment-for-order-flow program. See Note 4 *supra*.

⁷ 15 U.S.C. 78f(b).

⁸ 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

PCX neither solicited nor received written comments concerning the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the PCX, it has become effective pursuant to section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f) thereunder.¹⁰ At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the 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. For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on February 28, 2003, the date Amendment No. 1 was filed.

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. 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-2003-07 and should be submitted by April 3, 2003.

³ The Commission notes that in its cover letter accompanying the proposed rule change, PCX inadvertently referred to the filing as SR-PCX-2003-06.

⁴ See letter from Mai S. Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated February 28, 2003, received via facsimile on February 28, 2003. In Amendment No. 1, the PCX clarified that the marketing fee program applies only to option issues classified by the PCX as among the Top 250 issues, and described how the Top 250 issues are determined. In addition, the PCX supplemented its Schedule of Marketing Charges to include a list of 19 options issues for which the marketing fee has been reduced from \$0.50 to \$0.00.

⁵ See Exchange Act Release No. 44830 (September 21, 2001), 66 FR 49728 (September 28, 2001) (SR-PCX-2001-37).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f).