

Room. Copies of these filings also will be available for inspection and copying at the principal office of NFA. Electronically submitted comments will be posted on the Commission's Web site (<http://www.sec.gov>). All submissions should refer to File No. SR-NFA-2003-01 and should be submitted by April 16, 2003.

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. 34-47549; File No. SR-PCX-2003-04]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Amend its Fee Schedule for Services Provided to ETP Holders and Sponsored Participants That Trade Nasdaq Securities on the Archipelago Exchange

March 20, 2003.

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 January 30, 2003, 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 III below, which Items have been prepared by the Exchange. On March 19, 2003, the Exchange amended the proposal.<sup>3</sup> The PCX has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the PCX under section 19(b)(3)(A)(ii) of the Act,<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, as amended, from interested persons.

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

The Exchange, through PCXE, proposes to amend its fee schedule for services provided to ETP Holders and Sponsored Participants that trade Nasdaq securities on the Archipelago Exchange, 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 PCX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. 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 Exchange proposes to amend the fees charged to ETP Holders<sup>5</sup> and Sponsored Participants<sup>6</sup> (collectively "Users") that access the ArcaEx trading facility to include certain fees and credits for Nasdaq securities. ArcaEx is scheduled to begin trading Nasdaq securities pursuant to unlisted trading privileges<sup>7</sup> in the early first quarter of 2003. The Exchange proposes to adopt fees for Nasdaq securities that parallel the Exchange's rate structure for exchange-listed securities.

<sup>5</sup> See PCXE Rule 1.1(n).

<sup>6</sup> A "Sponsored Participant" means "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>7</sup> See Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges ("Nasdaq UTP Plan"). The participants in the Nasdaq UTP Plan are the National Association of Securities Dealers, Inc. ("NASD"), the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("Phlx"). Eligible securities under the Nasdaq UTP Plan are defined in section III.B.

#### Trade-Related Charges

(a) *Transaction Fees.* The PCX currently charges all Users a transaction fee of \$0.003 per share for orders in exchange-listed securities that extract liquidity by responding to, and executing against, orders residing in the ArcaEx Book ("Book").<sup>8</sup> The Exchange proposes to charge this same transaction fee to Users for orders in Nasdaq securities. The Exchange believes that this proposed fee will provide incentives for increasing order flow to ArcaEx, and will have the effect of attracting resting limit orders into the Book, which will help promote liquidity, transparency, and in turn, price discovery. The Exchange notes that the following items continue to be excluded from this fee: (i) Directed Orders, regardless of account type, that are matched within the Directed Order Process;<sup>9</sup> (ii) Directed Orders for the account of a retail public customer that are executed partially or in their entirety via the other Order processes;<sup>10</sup> (iii) orders executed in the Opening Auction and the Market Order Auction;<sup>11</sup> (iv) Cross Orders;<sup>12</sup> and (v) participants in the Nasdaq UTP Plan that transmit orders via telephone.<sup>13</sup>

The PCX also proposes to charge a transaction fee of \$0.004 per share for any unfilled or residual portion of a User's order in Nasdaq securities (including a retail public customer

<sup>8</sup> ArcaEx maintains an electronic file of orders, called the ArcaEx Book, through which orders are displayed and matched. The ArcaEx Book is divided into four components, called processes—the Directed Order Process, the Display Order Process, the Working Order Process, and the Tracking Order Process. See PCXE Rules 7.36 and 7.37 for a detailed description of these order execution processes.

<sup>9</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 a particular Market Maker by the User. See PCXE Rule 7.37(a)(description of "Directed Order Process").

<sup>10</sup> If a retail public customer order has not been executed in its entirety after progressing through the Directed Order, Display Order, Working Order, and Tracking Order processes, the remaining portion of such order, if eligible, will be routed to another market center or participant. Any executed portion of that order will be subject to the proposed transaction fee of \$0.004 per share.

<sup>11</sup> See PCXE Rules 7.35(b) and (c) for a detailed description of the Opening Auction and the Market Order Auction, respectively.

<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> See footnote 7, *supra*.

<sup>8</sup> 17 CFR 200.30-3(a)(75).

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

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

<sup>3</sup> See March 18, 2003 letter from Rhonda Y. Jones, Regulatory Policy, PCX, to Joseph P. Morra, Special Counsel, Division of Market Regulation, SEC, and attachments ("Amendment No. 1"). Amendment No. 1 replaces and supersedes the original proposed rule change in its entirety. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on March 19, 2003, the date the PCX filed Amendment No. 1. See section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).