

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 the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange is proposing to make the following modification to its Schedule of Fees and Charges in order to recover costs associated with conducting options sales practice examinations of its member firms that conduct public options business. The current regulatory fees schedule includes a Designated Examining Authority ("DEA") fee of \$2000 per month for each member organization for which the Exchange is the DEA. Due to recent developments in DOEA examinations, the Exchange proposes to add a \$2000 per month DOEA fee⁵ to apply to firms that conduct a public options business. The new fee would be applicable only to members and member firms for which the Exchange is the DOEA.

In 1983, the Options Self-Regulatory Council ("OSRC") submitted to the SEC an agreement allocating regulatory responsibilities with respect to common members. The purpose of the agreement was to reduce regulatory responsibility duplication for options-related sales practice matters and to designate the following self-regulatory organizations ("SROs") as DOEAs: The American Stock Exchange, the Chicago Board Options Exchange, NASD, and the New York Stock Exchange. Since establishing this agreement, the DOEAs have been conducting options sales practice examinations on behalf of applicable participants. Due to the increase in costs associated with conducting such examinations, the OSRC has proposed a means to allow for an allocation of

regulatory costs incurred in fulfilling obligations under the agreement among all current and future DOEA and non-DOEA participants. As such, the OSRC has proposed to allocate a portion of the costs borne by the SROs based on the percentage of their overall expense pool.

As an alternative, the Exchange proposes to develop an examination program to review member firms that conduct public options business in-house. As a newly designated DOEA,⁶ the Exchange would develop an examination program to review options sales practices as they relate to the public (e.g., advertising, sales literature, risk disclosures, approval of new accounts and risk tolerances for individuals) for member firms that are assigned to it by the OSRC. By conducting the options sales practice examinations in-house, the Exchange would be able to pass these expenses directly to the firms that require an examination. In the absence of any PCX initiative, the Exchange will be allocated a certain portion of the DOEA costs borne by other SROs, which would increase the Exchange's overhead without cost recovery. Thus, the Exchange's proposal for in-house examinations would allow for recovery of the regulatory costs in a fair and equitable manner.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)⁷ of the Act in general and section 6(b)(4)⁸ of the Act, in particular, because 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

The foregoing rule change, which establishes or changes a due, fee or other charge imposed by the Exchange, has become effective pursuant to section 19(b)(3)(A)⁹ of the Act and subparagraph (f)(2) of Rule 19b-4 thereunder.¹⁰ 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 the 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, when Amendment No. 1 was filed.¹¹

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 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 PCX. All submissions should refer to File No. SR-PCX-2003-03 and should be submitted by April 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

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⁵ To avoid duplicative billing, the DOEA fee charged to a member firm that conducts public options business will not apply if the Exchange is the DEA for such member firm.

⁶ The Exchange has been designated as a DOEA as of January 1, 2003.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

¹¹ See notes 3 and 4, *supra*.

¹² 17 CFR 200.30-3(a)(12).