

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47207; File No. SR-PCX-2002-79]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Amend Its Schedule of Fees and Charges To Increase the User Transaction Credit for Certain Transactions in Listed Securities and To Increase the Transaction Fee for Certain Transactions in Listed Securities

January 16, 2003.

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 December 31, 2002, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission the proposed rule change as described in items I, II and III below, which the PCX has prepared. 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, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its fee schedule to increase the transaction credit for ETP Holders³ and Sponsored Participants⁴ who provide liquidity in listed securities that are traded on the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE. The PCX also proposes to raise the transaction fee for orders that take liquidity from the ArcaEx Book.⁵ 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 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 the statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the PCX's fee schedule by increasing the level of the transaction credit paid to ETP Holders and Sponsored Participants (collectively "Users") who provide liquidity in exchange-listed securities that are traded on ArcaEx. Currently, Users earn a credit of \$0.001 per share for providing liquidity in listed securities by entering resting limit orders that are subsequently executed against incoming marketable orders in the ArcaEx book. The PCX proposes to increase the level of the transaction credit for listed securities from \$0.001 to \$0.002 per share. The increased credit of \$0.002 is the same amount that is currently applied to orders that provide liquidity in Exchange-Traded Funds ("ETFs") and American Depository Receipts ("ADRs"). The PCX intends for this credit to create additional incentives to Users to provide liquidity in listed securities that are traded on the ArcaEx facility.

In addition, the PCX proposes to raise the transaction fee for orders that take liquidity from the ArcaEx Book. Currently, Users who take liquidity from the ArcaEx Book are charged \$0.002 per share. The PCX proposes to increase the level of the transaction fee for listed securities from \$0.002 to \$0.003 per share, which would bring the fee to the same level as currently applied to orders in ETFs.⁶

⁶ The PCX notes that the following items continue to be excluded from this fee: (1) Directed Orders, regardless of account type, that are matched within the Directed Order Process; (2) Directed Orders for the account of a retail public customer that are executed partially or in their entirety via the Directed Order, Display Order, Working Order, and Tracking Order processes (however, any unfilled or residual portion of a retail customer's order that is routed away and executed by another market center or participant will incur this transaction fee); (3) orders executed in the Opening Auction and the Market Order Auction; (4) Cross Orders; (5) commitments received through ITS; and (6) participants in the Nasdaq UTP Plan that transmit orders via telephone.

2. Basis

The PCX believes that the proposal is consistent with section 6(b) of the Act,⁷ particularly section 6(b)(4) of the Act,⁸ in that 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 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The PCX 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

Because the PCX had designated the foregoing rule change proposal as a fee filing, it has become effective upon filing 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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

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).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See PCXE rule 1.1(n).

⁴ 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).

⁵ 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.