

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48119; File No. SR-PCX-2003-29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc., Relating to Exchange Fees and Charges

July 2, 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 June 30, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") 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. 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 Exchange proposes to amend its Schedule of Fees and Charges to eliminate the continued listing fee and to limit the application of the shortfall fee. The text of the proposed rule change is available at the Office of the Secretary 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, PCX 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Schedule of Fees and Charges in order to: (i) eliminate the continued listing fee, and (ii) modify the shortfall fee, making it inapplicable to issues allocated in the first full four months of trading by a Lead Market Maker ("LMM"). The Exchange believes that this proposal will foster the Exchange's strategic plan of attracting new sources of capital to the Exchange and encouraging LMMs to expand their level of participation on the Exchange by accepting new allocation of issues.

Elimination of the Continued Listing Fee

The Exchange currently assesses LMMs a continued listing fee for issues that have not generated at least \$500 in monthly revenues to the Exchange on a trailing three-month average basis.³ The continued listing fee is calculated as the incremental difference between the \$500 threshold and the amount of revenue generated by the issue. The Exchange recognizes that the continued listing fee may deter an LMM from taking on a newly allocated issue or in maintaining trading activity with respect to a particular issue. As a result, the Exchange has determined that, on balance, the fee no longer supports the Exchange's paramount goal of attracting capital to the Exchange and maintaining a stabilized base of issues. Accordingly, the Exchange believes that it would be advantageous to eliminate the continued listing fee.

Limiting the Application of the Shortfall Fee

In February 2002, the Exchange began to assess a shortfall fee of \$0.35 per shortfall contract on top 120 equity option issues if the PCX volume in the issue was less than 10% of the national volume in that issue for that month.⁴ In June 2002, the Exchange increased the volume base for the LMM shortfall fee from 10% to 12% for the top 120 equity options nationally.⁵ The volume base

for the fee is 12% of the monthly industry volume for each qualifying issue, less the PCX monthly volume for the issue.

From time to time, an LMM may divest itself of a significant number of issues or the Exchange may add new products or new issues for trading. The Exchange encourages applications from qualified LMMs to trade newly posted issues, but given that an LMM will be required to maintain a 12% market share or be subject to the shortfall fee, LMMs may be reluctant to take on the risks of trading a significant number of new issues and opt to take on fewer issues until they have developed a trading strategy relative to the new issues.

In order to help foster demand for top 120 issues during a period of continuing consolidation among trading firms, and to prepare for the implementation of PCX Plus,⁶ the Exchange proposes to eliminate the application of the shortfall fee for the first four full calendar months that an LMM trades a newly allocated issue. The Exchange believes that this modification to its shortfall fee will encourage LMMs to take on larger numbers of issues by limiting their exposure to these fees until they have had sufficient time to develop appropriate marketing and trading strategies.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)⁷ of the Act, in general, and furthers the objectives of section 6(b)(4)⁸ of the Act in particular, in that it provides for the equitable allocation of reasonable fees among its members.

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

The Exchange believes that the proposed rule change will promote competition by encouraging more LMMs to take on allocations of more issues.

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

Because the foregoing rule change establishes or changes a due, fee, or

³ See Securities Exchange Act Release No. 42050 (October 21, 1999), 64 FR 58117 (October 28, 1999) (Notice of Filing and Immediate Effectiveness of SR-PCX 99-32).

⁴ See Securities Exchange Act Release No. 45351 (January 29, 2002), 67 FR 5631 (February 6, 2002) (Notice of Filing and Immediate Effectiveness of SR-PCX-2001-51).

⁵ See Securities Exchange Act Release No. 46239 (July 19, 2002), 67 FR 48962 (July 26, 2002) (Notice of Filing and Immediate Effectiveness of SR-PCX-2002-38).

⁶ See Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.