

change, as amended, from interested persons.

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

The Exchange is proposing to adopt a rule disclaiming liability for The Options Clearing Corporation ("Clearing Corporation") with respect to the Options Intermarket Linkage ("Linkage").

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics*.

\* \* \* \* \*

#### **Rule 1905. Limitation of Liability**

*The Clearing Corporation shall have no liability to Members with respect to the use, non-use or inability to use the Linkage, including without limitation the content of orders, trades, or other business facilitated through the Linkage, the truth or accuracy of the content of messages or other information transmitted through the Linkage, or otherwise.*

\* \* \* \* \*

### **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 ISE 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 ISE 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 adopt a rule to limit the liability of the Clearing Corporation with respect to the Members' use of the Linkage. Pursuant to the Linkage Project and Facilities Management Agreement ("Agreement"),<sup>4</sup> the parties to the Agreement who are Participants in the Intermarket Option Linkage Plan, including the ISE, are required to file a proposed rule change with the Commission providing the Clearing Corporation with limited liability with respect to Participant Members' use of

the Linkage within four months following the Linkage's effective date. Hence, the ISE proposes this rule change to fulfill its obligation under the Agreement.

##### **2. Statutory Basis**

The ISE believes that its proposal is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>6</sup> in particular, in that it seeks to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The ISE does not believe that the proposed rule change, as amended, 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 ISE neither solicited nor received written comments concerning the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the ISE consents, the Commission will:

(A) By order approve such proposed rule change, as amended; or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 filings will also be available for inspection and copying at the principal office of the ISE.

All submissions should refer to File No. SR-ISE-2003-15 and should be submitted by September 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-48317; File No. SR-PCX-2003-40]

### **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 for the Archipelago Exchange Facility**

August 12, 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 August 1, 2003, 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 for services provided to ETP Holders<sup>3</sup> and

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See PCXE Rule 1.1(n) (defining "ETP Holder").

<sup>4</sup> Linkage Project and Facilities Management Agreement (January 30, 2003).

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).