

Sponsored Participants⁴ that use the PCX's equities trading facility, the Archipelago Exchange ("ArcaEx"), by: (1) Reducing the per-share transaction fee for NYSE-listed securities to zero; (2) reducing the per-share User Transaction Credit for NYSE-listed securities to zero; and (3) eliminating the Tape A rebate for all transactions in NYSE-listed securities with the exception of Cross Orders.

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 proposal. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of the statements. The text of the proposed rule change is available at the PCX and at the Commission.

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

1. Purpose

The PCX, through its wholly owned subsidiary PCXE, proposes to reduce the per-share round lot transaction fee for NYSE-listed securities charged to ETP Holders and Sponsored Participants (collectively, "Users") that execute trades on ArcaEx. The PCX currently charges all Users in NYSE-listed securities a transaction fee of \$0.003 per share for orders executed in the ArcaEx limit order book. The PCX is proposing to reduce this transaction fee to zero but to leave unchanged its current odd-lot fee for NYSE-listed securities.⁵ According to the PCX, the rationale for this change is to make the pricing for executions on the ArcaEx in NYSE-listed securities more competitive. The PCX evaluated the costs and the other changes proposed in this filing and determined that it was feasible to lower the transaction fee for NYSE-listed securities traded on the ArcaEx facility.

The PCX also proposes to reduce the per-share User Transaction Credit for NYSE-listed securities to zero from \$.002 per share. With respect to the PCX's market data revenue credit for NYSE listed securities (or "Tape A

Securities"), the PCX proposes to eliminate the Tape A rebate for all transactions but Cross Orders.⁶ A Cross Order on the ArcaEx will continue to receive a 50% tape revenue credit per qualifying trade.

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 inappropriate burden on competition.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)⁹ of the Act and Rule 19b-4(f)¹⁰ thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days after the filing of this 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 the Commission's Public Reference Room. Copies of the 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-2003-40 and should be submitted by September 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48322; File No. SR-PCX-2003-20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendments No. 1 and 2 Thereto, by the Pacific Exchange, Inc. Relating to Limitation of Liability of the Options Intermarket Linkage

August 12, 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 April 28, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to 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 PCX. On August 4, 2003, the PCX submitted Amendment No. 1 to the proposed rule change.³ On August 7, 2003, the PCX submitted Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Tania J. Cho, Staff Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 1, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange submitted a new Form 19b-4, which replaced the original filing in its entirety. In Amendment No. 1, the PCX clarified in proposed PCX Rule 13.5(a) that Options Intermarket Linkage ("Linkage"), as used to send orders and other information to or from the Exchange, is a facility or service of the Exchange for the purpose of PCX Rule 13.2. In addition, the Exchange amended PCX Rule 13.2(b) to clarify that this Rule does not apply to Linkage.

⁴ See letter from Tania J. Cho, Staff Attorney, Regulatory Policy, PCX, to Deborah L. Flynn,

Continued

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 Odd-lot orders that are created as a result of a partial fill of a round lot would continue to be excluded from this fee.

⁶ A Cross Order is defined in PCXE Rule 7.31(s).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).