

business regardless of the size or type of transactions. In Rule A-13, the MSRB sets forth a fee structure that assesses dealers based on dealers' underwriting and transaction amount.<sup>11</sup>

The Commission recognizes the difficulties inherent in assessing the MSRB's fee structure, and believes that the MSRB has made a good faith effort to do so in a manner that is fair and reasonable. The Commission agrees with the MSRB that the fees are not levied for a specific purpose but for general purposes, and that MSRB regulatory activities affect all participants in the dealer community.

#### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (File No. SR-MSRB-2003-06) be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48333; File No. SR-PCX-2003-37]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 by the Pacific Exchange, Inc. Relating to a One-Year Extension of the Automatic Opening Rotation Pilot Program

August 13, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 25, 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. On August 4, 2003 and August 6, 2003, the Exchange filed amendments to the proposed rule

change.<sup>3</sup> The Exchange has designated the proposed rule change, as amended, as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to extend its AOR pilot program for one year until September 30, 2004. The text of the proposed rule change, as amended, is available at the Office of the Secretary, 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 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 parts of such statements.

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

###### 1. Purpose

On September 30, 1999, the Commission approved a one-year pilot program for the operation of the Exchange's AOR System.<sup>5</sup> On August

21, 2000,<sup>6</sup> August 13, 2001,<sup>7</sup> and June 10, 2002,<sup>8</sup> the Commission granted one-year extensions to the pilot program. The pilot program is currently set to expire on September 30, 2003.

AOR provides a procedure to facilitate the execution of option orders at the opening by providing an electronic means of establishing a single price opening. The Exchange is requesting an additional extension of the AOR pilot program for one year, to September 30, 2004. The added time permits the Exchange to phase-in the Exchange's new trading platform for options, "PCX Plus", on an issue-by-issue basis.<sup>9</sup> As each issue is phased into PCX Plus, the Exchange will simultaneously phase-out such issue from the current AOR process. PCX Plus will eventually replace the AOR process in its entirety.<sup>10</sup> Hence, the Exchange will not be seeking permanent approval of the AOR pilot program.<sup>11</sup> The Exchange believes that the AOR pilot program is operating successfully and without any problems and, on that basis, believes that a one-year extension of the pilot program is warranted.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>13</sup> in particular, because it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition

(1999) (in part, approving AOR for sixteen issues on a thirty-day pilot basis).

<sup>6</sup> See Securities Exchange Act Release No. 43187 (August 21, 2000), 65 FR 52464 (August 29, 2000).

<sup>7</sup> See Securities Exchange Act Release No. 44688 (August 13, 2001), 66 FR 43600 (August 20, 2001).

<sup>8</sup> See Securities Exchange Act Release No. 46055 (June 10, 2002), 67 FR 41288 (June 17, 2002).

<sup>9</sup> See Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (Order approving PCX Plus).

<sup>10</sup> The PCX represents that it will file a rule proposal to eliminate the AOR pilot program rule text in Rule 6.64, Commentary .03 if the PCX Plus transition is completed before September 30, 2004.

<sup>11</sup> The PCX estimates that PCX Plus will be implemented gradually on an issue-by-issue basis beginning December 15, 2003, and is anticipated to become completely operative by June 30, 2004. The Exchange will not be seeking an additional extension of its AOR pilot program provided that the PCX Plus implementation is completed without significant delay.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> Rule A-13 provides for an underwriting fee of \$.03 per \$1000 par value of bonds and \$.01 per \$1000 par value of notes, and a transaction fee of \$.005 per \$1000 par value.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</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 letters from Tania J. Cho, Staff Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 1, 2003, replacing Form 19b-4 in its entirety ("Amendment No. 1") and August 6, 2003 ("Amendment No. 2"). In Amendment No. 1, the PCX clarified the implementation and operative dates of PCX Plus and represented that it will not be seeking additional extension of the Automated Opening Rotation ("AOR") pilot program provided that PCX Plus has been implemented without delay. The PCX also made minor technical corrections to a citation in its footnotes and in the rule text and changed its basis for filing the proposed rule change from Section 19(b)(2) to Section 19(b)(3)(A)(iii) of the Act. In Amendment No. 2, the PCX changed its basis for filing the proposed rule change from Section 19(b)(3)(A)(iii) to Section 19(b)(3)(A) and Rule 19b-4(f)(6) of the Act and made minor technical corrections to a reference in its footnotes.

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Securities Exchange Act Release Nos. 41970 (September 30, 1999), 64 FR 54713 (October 7, 1999) (approving one-year AOR pilot) and 41824 (September 1, 1999), 64 FR 49263 (September 10,