

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

The PCX is proposing to amend its Schedule of Fees and Charges by eliminating its Order Cancellation Fee. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

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SCHEDULE OF FEES AND CHARGES FOR EXCHANGE SERVICES

PCX OPTIONS: TRADE-RELATED CHARGES

[ORDER CANCELLATION \$1.00 per MFI order canceled

Except as provided herein, the fee only applies to orders canceled through the MFI in any month where the total number of orders canceled through the MFI by the executing Clearing Member exceeds the total number of orders that same firm executed through the MFI in that same month. This fee does not apply to executing Clearing Members canceling less than 500 orders through the MFI in a month. The MFI fee will also not apply to cancel requests on invalid orders (the option has already expired and the Exchange has purged it from its system); invalid symbols (a symbol that does not refer to a valid option traded on the Exchange); or invalid series (a series that is not recognized by or traded on the Exchange).]

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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 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 has established an Order Cancellation Fee in order to address operational problems and costs resulting from the practice of market participants canceling orders immediately after they place such

orders through the Exchange's Member Firm Interface ("MFI").³ Recently, the Exchange modified the Fee to exclude invalid orders (the option has already expired and the Exchange has purged it from its system); orders with an invalid symbol (a symbol that does not refer to a valid option traded on the Exchange); or orders with an invalid series (a series that is not recognized or traded by the Exchange).⁴ However, despite this modification, the Exchange is still required to include certain orders, such as partial executions with a partial cancellation or a cancel of the balance and partially executed or cancel requests on expired orders in its definition of "cancelled orders." The Exchange notes that the primary purpose of the Fee was to rectify the problem of participants immediately canceling orders and thereby gaming the system. It was not intended to preclude participants from making reasoned business decisions that may result in a cancel order.⁵ For this reason, the Exchange no longer believes that the Order Cancellation Fee is the appropriate vehicle to remedy the concern of excessive cancels. It therefore seeks to eliminate it from its Schedule of Fees and Charges.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,⁶ in general, and section 6(b)(4) of the Act,⁷ 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 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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and subparagraph (f)(2) of Rule 19b-4⁹ thereunder because it changes a fee imposed by the PCX. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such 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.¹⁰

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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 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-2003-58 and should be submitted by November 26, 2003.

³ See Securities Exchange Act Release No. 45262 (January 9, 2002), 67 FR 2266 (January 16, 2002) (Notice of Filing and Immediate Effectiveness of SR-PCX-2001-47).

⁴ See Securities Exchange Act Release No. 48031 (June 13, 2003), 68 FR 37189 (June 23, 2003) (Notice of Filing and Immediate Effectiveness of SR-PCX-2003-25).

⁵ Specifically, PCX represents that a Clearing Member may enter an order into MFI that is partially executed on the Exchange, leaving an unexecuted residual portion of the order in the Clearing Member's system. The Clearing Member must submit a cancel request to delete the unexecuted residual portion of the order from its system. In such situations, PCX does not believe the Clearing Member should be subject to the Order Cancellation Fee (assuming the threshold test for imposing the fee is met), because the Clearing Member is making a reasoned business decision that results in a cancel request. Telephone conversation between Mai Shiver, Senior Attorney, Regulatory Policy, PCX and Gordon Fuller, Counsel to the Assistant Director, and Elizabeth MacDonald, Attorney, Division of Market Regulation, SEC, October 20, 2003.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ See 15 U.S.C. 78(b)(3)(C).