

acquisition, holding or disposition of shares of the Underlying Portfolios and Other Portfolios, will not exceed the limits set forth in Rule 2830 of the National Association of Securities Dealer Conduct Rules.

4. Before approving any advisory contract under Section 15 of the Act, the Board, including a majority of the Directors who are not "interested persons," as defined in Section 2(a)(19), will find that the advisory fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided under any Underlying Portfolio or Other Portfolio advisory contract. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Fund.

### Conclusion

For the reasons stated herein, the Applicants submit that the terms of the contemplated transaction meet all of the requirements of Sections 12(d)(1)(J), 17(b) and 6(c) of the Act. Pursuant to Section 12(d)(1)(J), exemption of this transaction is consistent with the public interest and the protection of investors. Pursuant to Section 17(b), the terms of the proposed transaction are reasonable and fair and do not involve overreaching, the proposed transaction is consistent with the investment objectives and policies of each Profile Portfolio, and the proposed transaction is consistent with the general purposes of the Act. Similarly, under Section 6(c) of 3 the Act, Applicants submit that their request for an order is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Furthermore, Applicants seek relief relating to Future Profile Portfolios and Future Fixed Contracts in order to avoid incurring the expense and effort of drafting, and to relieve the Commission from the corresponding burden of reviewing, duplicative exemptive applications. Applicants submit that an order should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-3579 Filed 2-12-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47330; File No. SR-PCX-2003-05]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges for Options Intermarket Linkage Orders

February 6, 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 January 31, 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 PCX. 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

In connection with the launch of the options intermarket linkage ("Linkage"), the PCX proposes to amend its Schedule of Fees and Charges for Exchange Services in order to clarify that unless otherwise provided, executions resulting from Linkage orders will be subject to the same billing treatment as current executions.

#### 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 PCX 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

On July 28, 2000, the Commission approved a national market system plan

for the purpose of creating and operating an intermarket options market linkage ("Linkage Plan" or "Plan")<sup>3</sup> which linkage now includes participation by the five option exchanges ("Participant Exchanges").<sup>4</sup> The PCX proposed to adopt new rules relating to the operation of the Linkage on September 26, 2002 and filed an amendment to the proposal on January 30, 2003. Along with all of the Participant Exchanges, the Exchange launched phase I of Linkage on January 31, 2003.

In connection with the launch of the Linkage, the Exchange seeks to clarify its Schedule of Fees and Charges for Exchange Services in order to add a provision stating that executions resulting from Linkage orders will be subject to the same billing treatment as current executions. Accordingly, executions arising from either a Principal Acting as Agent ("P/A") Linkage order, or a Principal Linkage Order that are routed to the Exchange from other market centers will be subject to the same trade related charges assessed on market maker executions originating from the PCX. The proposal specifies that no fees will apply to Satisfaction Orders, which result after a trade-through.<sup>5</sup>

The Exchange does not seek to make any other changes to its Schedule of Fees and Charges for Exchange Services.

###### 2. Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and Section 6(b)(4) of the Act,<sup>7</sup> in particular, 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 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.

<sup>3</sup> See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

<sup>4</sup> See Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) and 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000).

<sup>5</sup> Trade-throughs occur when broker-dealers execute customer orders on one exchange at prices inferior to another exchange's disseminated quote.

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

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

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