

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-2003-67 and should be submitted by January 20, 2004.

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

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48971; File No. SR-PCX-2003-69]

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

December 22, 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 December 12, 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 the Exchange 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 Exchange is proposing to amend the General Membership Fees and Floor, Market Maker and Remote Market Maker Fees portions of its Schedule of Fees and Charges ("Schedule"). The text of the proposed change to the fee schedule is available at the Exchange 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 had 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 is proposing to amend the General Membership Fees and Floor, Market Maker and Remote Market Maker portions of its Schedule in order to make a number of changes to member-related fees. According to the PCX, this proposal would increase existing fees to competitive levels of other self-regulatory organizations ("SROs") and would introduce new fees to recover costs associated with processes requiring staff research and documentation, and reproduction of materials. Each proposed new fee or amendment is described below.

a. *Initial Membership Fee.* The Exchange proposes to incorporate a flat fee of \$1,500 for all seat activations. Currently, the PCX assesses each Member Organization an initial membership fee calculated as 5% of the average price of the last three membership seat sales, with an established per activation minimum of \$1,000 and maximum of \$4,000. The Exchange proposes to replace the calculation method with a simple flat fee of \$1,500 for all Member Organizations and Nominees.<sup>3</sup> The Exchange believes that restructuring this fee will provide much needed simplicity for the membership as well as Exchange staff. Also, this fee amount is substantially similar to the initial membership fee assessed by the Philadelphia Stock Exchange, Inc. ("Phlx").<sup>4</sup>

b. *Statutory Disqualification.* The Exchange proposes to amend the PCX statutory disqualification fee to \$2,000 for all applications resulting in statutory disqualification proceedings. The PCX currently assesses \$250 to process applications for approved status despite grounds for statutory disqualification. In order to bring this fee up to the competitive levels of other SROs, the

Exchange proposes to increase the fee to \$2,000 and assess the fee for all applications resulting in statutory disqualification proceedings.<sup>5</sup> Hence, the fee will not be assessed unless the review of the application reveals that such a proceeding is necessary.

c. *Issue Relinquishment Request.* The Exchange proposes to implement a new fee, in the amount of \$100 per issue, to cover the cost associated with processing issue relinquishment requests from Lead Market Makers. Each issue relinquishment request, regardless of the number of issues, requires substantial Exchange resources, including dedicated staff time. Therefore, the Exchange believes it is necessary to implement a nominal fee of \$100 per issue for cost recovery.

d. *Hard Copy Subscription—PCX Weekly Bulletin.* The Exchange proposes to establish a \$200 annual subscription fee applicable to all Members that elect to receive the PCX Weekly Bulletin in a hard copy format as opposed to e-mail.<sup>6</sup> The purpose of this fee is twofold. First, the \$200 annual fee is intended to offset the hard copy publication and dissemination cost, as well as the cost of dedicated staff time. Second, the Exchange believes that this fee will result in a positive effect in that it will promote the reduction of paperwork.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and Section 6(b)(4) of the Act,<sup>8</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.

#### 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 with respect to the proposed rule change.

<sup>5</sup> For example, the Chicago Board Options Exchange, Inc. ("CBOE") assesses a \$2,750 fee for applications resulting in statutory disqualification proceedings. See CBOE Fee Schedule.

<sup>6</sup> All Members and Member Firms are required to maintain an e-mail address for communication with the Exchange. See PCX Rule 1.13.

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<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> The initial seat activation fee would apply to each Member Organization as well as each Nominee to a Member Organization, since activation for each Nominee requires a separate administrative process.

<sup>4</sup> See Phlx Fee Schedule, Appendix A. The Phlx also assesses a \$1,500 fee for initial memberships.