

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49656; File No. SR-PCX-2004-41)

May 5, 2004

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

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 30, 2004, 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 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

The Exchange is proposing to amend its Schedule of Fees and Charges For Exchange Services in order to rebate the fees charged to Lead Market Makers (“LMMs”) when they use the intermarket options linkage (“Linkage”) to send a Principal Acting as Agent (“P/A”) Order³ to another options exchange (an “away market”).

The text of the proposed rule change is available at the offices of the Exchange and at the Commission.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A “P/A Order” is an order for the principal account of a market maker that is authorized to represent customer orders, reflecting the terms of a related unexecuted customer order for which the market maker is acting as agent. See Section 2(16) of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage.

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

The purpose of this proposed rule change is to rebate the fees for PCX LMMs who trade P/A Orders executed through Linkage at away markets. Currently, when a PCX LMM sends a P/A Order through Linkage to an away market, the LMM pays transaction costs to execute the order at both the PCX and the away market center. The Exchange believes that fees have placed an unnecessary burden on the PCX LMMs and have created a disincentive to use Linkage. In order to encourage the use of Linkage and to remove some of the financial burden placed on PCX LMMs that use Linkage, the PCX is proposing to rebate the fees for PCX LMMs that send P/A Orders through Linkage to away markets. Specifically, the Exchange is proposing to rebate the LMM for the transaction and comparison charges incurred on the subsequent execution of customer orders that have been routed to and received an execution on another exchange through Linkage. Fees will be rebated based on the aggregate market maker transaction and aggregate market maker comparison charge calculated at month-end.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,⁴ in general, and Section 6(b)(4),⁵ in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members and other persons using its facilities for the purpose of accessing the National Best Bid or Offer by using the Linkage on behalf of a customer order.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the PCX, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁶ and Rule 19b-4(f)(2)⁷ thereunder. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate such rule change

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

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 proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an E-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2004-41 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-PCX-2004-41. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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

⁷ 17 CFR 240.19b-4(f)(2).

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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PCX-2004-41 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).