

15A(b)(6) and 19(b)(2) of the Act to approve Amendment No. 4 to the proposed rule change on an accelerated basis.

The Commission finds good cause to approve Amendment No. 5 to the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 5 does two things. First, in response to commenters, Amendment No. 5 modifies the definition of "fund-of-funds" so that it includes only those investment companies that acquire securities issued by any other investment company in excess of the amounts permitted under Section 12(d)(1)(A) of the 1940 Act. This definition is narrower than the one originally proposed and should make clear that the combined sales charge limits apply only to those structures traditionally understood to be funds-of-funds. Second, also in response to commenters, Amendment No. 5 delays the implementation of the prohibition of sales loads on reinvestment dividends until April 1, 2000. This addresses commenters concerns regarding Y2K and the computer systems changes that the proposed rule change will necessitate. Accordingly, the Commission believes that is consistent with Sections 15A(b)(6) and 19(b)(2) of the Act to approve Amendment No. 5 to the proposed rule change on an accelerated basis.

The Commissions finds good cause to approve Amendment No. 6 to the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 6 clarifies that the prohibition of front-end or deferred sales charges on shares of investment companies purchased with reinvested dividends is not meant to apply to investment companies whose registration statements became effective under the Securities Act of 1933 prior to April 1, 2000. Amendment No. 6 also clarifies that the definition of "fund-of-funds" is intended only to cover an investment company that invests in the securities of another registered investment company. Accordingly, the Commission believes that it is consistent with Sections 15A(b)(6) and 19(b)(2) of the Act to approve Amendment No. 6 to the proposed rule change on an accelerated basis.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 4, 5, and 6 including whether the proposed rule changes are consistent with the Act. Persons making written

submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NASD-98-14 and should be submitted by November 18, 1999.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>32</sup> that the proposed rule change (SR-NASD-98-14) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>33</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42050; File No. SR-PCX-99-32]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Adoption of a Continued Listing Fee

October 21, 1999.

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 August 25, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

<sup>32</sup> 15 U.S.C. 78s(b)(2).

<sup>33</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.

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 PCX is proposing to adopt a new \$500 per month/per issue fee that will apply to Options Market Makers and Lead Market Makers ("LMMs") who want to continue trading certain low-volume option issues.

#### 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 discusses 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 Exchange is proposing to adopt a new Continued Listing Fee for option issues. The purpose of the new fee is two-fold. First, it is designed to facilitate the delisting of inactive or low-volume option issues that are currently listed and traded on the PCX. The Exchange recognizes the industry-wide need to reduce the overall amount of quotation and last sale reporting information that is currently being disseminated through the Options Price Reporting Authority ("OPRA"). At the same time, the Exchange is seeking to provide the members who trade these inactive issues with an opportunity to continue trading the ones that they deem to be most promising, subject to the fee.<sup>3</sup> Second, the new fee is designed to allow the Exchange to recover the costs of

<sup>3</sup>In September 1999, 273 of the approximately 800 issues traded on the Exchange were subject to the new fee. Of those issues, LMMs paid the \$500 fee for 190 issues. Consequently, 83 issues were eligible for redistribution and were posted for reallocation. Because there were no applicants for those issues, the Reallocation Committee delisted them. Meeting among Michael Pierson, Director, Regulatory Policy, PCX; and Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission; Gordon Fuller, Special Counsel, Division of Market Regulation, Commission; Ira Brandriss, Attorney, Commission; and Melinda Diller, Law Clerk, Commission (October 8, 1999).

supporting the listing and trading of their inactive issues.

The new fee applies to equity and index option issues that do not generate at least \$400 in Exchange revenue per month, based on a "rolling" three-month average.<sup>4</sup> The fees and charges included in calculating whether an issue has generated \$500 in Exchange revenue are: (1) PCX Transaction Charges;<sup>5</sup> (2) PCX Ticket Data Entry Charges;<sup>6</sup> (3) PCX On-line Comparison Charges;<sup>7</sup> (4) PCX Book Execution Fees;<sup>8</sup> and (5) PCX Book Staff Entry Charges.<sup>9</sup> Once an issue is subject to the new fee, the new fee will continue to apply in subsequent months, unless the issue generates \$500 or more in Exchange revenue per month, based on a "rolling" three-month average.<sup>10</sup>

Once an option issue has been identified as being subject to the fee, the Exchange will immediately notify the LMM or trading crowd that trades the issue. The LMM or trading crowd representative will then have an opportunity to make a commitment to pay the fee on an ongoing basis.<sup>11</sup> Alternatively, if the LMM or trading crowd representative does not commit to paying the fee on an ongoing basis,

then the Exchange will make the issue available for reallocation to other trading crowds or LMMs who are willing to commit to the fee upon reallocation.<sup>12</sup> If the issue is not reallocated, then it will be delisted. The Exchange always provides an opportunity for an option issue to be reallocated before initiating the delisting process.<sup>13</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objective of Section 6(b)(4) of the Act<sup>15</sup> in particular, in that it is designed to provide 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 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 Exchange neither solicited nor received written comments with respect to the proposed rule change.

<sup>11</sup> The Exchange represents that the LMM will have approximately one week to decide whether or not to pay the fee. Once an LMM or trading crowd has committed to paying the fee on an ongoing basis, the LMM will be required to continue paying the fee on a monthly basis unless either (a) the issue is no longer subject to the fee (because the issue generates \$500 or more in Exchange revenue per month, based on a "rolling" three-month average); or (b) the LMM or trading crowd representative indicates to the Exchange an unwillingness to continue paying the fee, and the issue is posted for reallocation. Telephone conversation between Michael Pierson, Director, Regulatory Policy, PCX, and Melinda Diller, Law Clerk, Commission (September 28, 1999).

<sup>12</sup> The Exchange represents that it follows an informal policy in reallocating before the opening of the market. Any LMM who wishes to apply for the issue may do so by submitting an application to the Reallocation Committee no later than 11 a.m. that day. The Committee then meets to consider all of the applicants and reassigns the issue to the applicant it considers to be best suited for the issue. Meeting among Michael Pierson, Director, Regulatory Policy, PCX; and Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission; Ira Brandriss, Attorney, Commission, and Melinda Diller, Law Clerk, Commission (October 8, 1999).

<sup>13</sup> Meeting among Michael Pierson, Director, Regulatory Policy, PCX; and Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission; Ira Brandriss, Attorney, Commission, and Melinda Diller, Law Clerk, Commission (October 8, 1999).

<sup>14</sup> 15 U.S.C. 78f(b).

## 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 Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>16</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>17</sup> At any time within 60 days of the filing of the 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.<sup>18</sup>

## 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, N.W., Washington, D.C. 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 also will be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-99-32 and should be submitted by November 18, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>18</sup> In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>19</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 Exchange Act Release No. 37860 (October 23, 1996), 61 FR 56079 (October 30, 1996) (order approving File No. SR-PSE-96-37).

<sup>4</sup> In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 17 CFR 200.30-3(a)(12).

<sup>3</sup> In September 1999, 273 of the approximately 800 issues traded on the Exchange were subject to the new fee. Of those issues, LMMs paid the \$500 fee for 190 issues. Consequently, 83 issues were eligible for redistribution and were posted for reallocation. Because there were no applicants for those issues, the Reallocation Committee delisted them. Meeting among Michael Pierson, Director, Regulatory Policy, PCX; and Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission; Gordon Fuller, Special Counsel, Division of Market Regulation, Commission; Ira Brandriss, Attorney, Commission; and Melinda Diller, Law Clerk, Commission (October 8, 1999).

<sup>4</sup> The rolling average is derived from the three months immediately preceding imposition of the fee. For example, if an issue generated \$490 in July, \$490 in August and \$500 in September, the issue will be subject to the new fee for October because the three-month average of \$493 is less than the \$500 threshold. However, if an issue generated \$490 in July, 490 in August and \$525 in September, the issue would not be subject to the new fee for October because the three month average of \$502 would exceed the \$500 threshold. A newly-listed option issue will not be subject to the fee until it has been listed on the Exchange for at least three months.

<sup>5</sup> These are currently set at \$0.12 per contract side for customer transaction (except that no customer