

jurisdiction of the EBCC to include the enforcement of rules and regulations relating to trading, order, decorum, health, safety, and welfare on the trading floors. Currently, Article IV, Section 9(b) of the PCX Constitution, states that “[t]he jurisdiction of [the EBCC] shall not extend to the enforcement of rules and regulations of the Floor Trading Committees relating to trading, order, decorum, health, safety, and welfare on the trading floors, or to hearings held by and sanctions imposed by such committees relating to such matters.” Currently, the rules and regulations governing trading, order, decorum, health, safety, and welfare are within the exclusive jurisdiction of the Floor Trading Committees (“FTCs”). The Exchange proposes to delete the above-quoted section from the PCX Constitution, and grant the EBCC and FTCs concurrent jurisdiction over the enforcement of these rules and regulations.

Under the proposal, the EBCC will be the primary disciplinary committee at the Exchange and the FTCs will retain jurisdiction to hear certain disciplinary matters, if necessary. An FTC rather than the EBCC may hear a case if it involves technical issues. For example, an FTC may act as the disciplinary committee if a “Marking the Close” trading violation occurs. That is, an incident that involves a market maker changing his quotes at the close to not accurately reflect the market in order to improve the market maker’s position. In such a case, the Exchange believes having the expertise of Floor Officials would be appropriate.

### III. Discussion

The Commission finds that the proposed rule change is consistent with Section 6(b)<sup>5</sup> of the Act, in general, and furthers the objectives of Section 6(b)(6),<sup>6</sup> in particular, in that it is designed to assure that Exchange members and persons associated with Exchange members are appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Commission believes that it is appropriate for the EBCC to have jurisdiction over disciplinary matters arising from the floor because it is less likely that the members of the EBCC will have personal knowledge of relevant incidents or a Floor Official ruling relating to the incident. The Commission believes that this will assist in creating a more objective disciplinary process at the PCX. Further, the

proposed rule change will centralize disciplinary actions in one committee at the Exchange. The Commission believes that having one primary disciplinary committee responsible for hearing complaints will better assure consistency in the decisions rendered.

However, the Commission also believes that it is appropriate for the Exchange to allow the FTC to retain jurisdiction to hear those disciplinary matters that require specialized knowledge of the trading rules. The Commission understands many of the trading rules involve complex issues which require a high level of expertise to fully comprehend, and evaluate in a meaningful way.

The Commission believes that the Exchange’s proposal to grant the EBCC and FTCs concurrent jurisdiction over disciplinary proceedings relating to trading, order, decorum, health, safety, and welfare on the trading floors, with the EBCC being the primary committee responsible, will result in consistent, independent decision-making. Moreover, the proposal will also ensure that matters involving complex and technical issues are handled by committees appropriately skilled to understand them and render fair decisions.

### IV. Conclusion

For all of the aforementioned reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup>

*It is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-PCX-00-12) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-28946 Filed 11-9-00; 8:45 am]

**BILLING CODE 8010-01-M**

<sup>7</sup> In approving this rule change, the Commission has considered the proposal’s impact on efficiency, competition, and capital formation, consistent with Section 3(f) of the Act. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43510; File No. SR-PCX-00-41]

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

November 3, 2000.

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 October 16, 2000, the Pacific Exchange, Inc. (“PCX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee or other charge imposed by the Exchange under section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested person.

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

PCX is proposing to amend its schedule of rates and charges in order to eliminate credits for book executions, to increase registered representative options principal<sup>4</sup> fees, and to establish examination, registration and annual fees for off-floor trading firms and their traders. The text of the proposed change to the PCX 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 received on the proposed rule change. The text of these statements may be examined at the

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

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

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

<sup>4</sup> Telephone conversation between Hassan Abedi, Attorney, Regulatory Policy, PCX, and Terri Evans, Special Counsel, Division of Market Regulation, SEC, on November 1, 2000 (clarifying that the increased fee also applies to registered options principals).

<sup>5</sup> 15 U.S.C. 78f(b).

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

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

Currently, the PCX Schedule of Rates and Charges credits order flow providers \$.10 per contract on all book executions, which can be used to offset other PCX charges. In addition, the PCX charges an annual fee of \$25 to all registered representatives and registered options principals for maintenance, new applications, or transfer of registration status. This fee supports the costs related to regulatory oversight and enforcement within the equities and options communities. Finally, the PCX does not charge a Designated Examining Authority ("DEA") fee for its off-floor traders.

The Exchange now proposes to modify its Schedule of Rates and Charges. First, the Exchange proposes to eliminate the \$.10 credit provided to order flow providers. In its original filing with the Commission the Exchange stated that this credit was needed in order to attract order flow and enable it to remain competitive.<sup>5</sup> Based upon its experience with this credit, the PCX believes that providing a credit for book activity does not create a meaningful incentive for attracting order flow.

Second, the Exchange proposes to increase its registered representative and registered options principal fee by \$10 to \$35 for annual maintenance, new applications, and transfers. The Exchange believes that this addition is warranted due to increased costs related to regulatory oversight and enforcement.

Finally, the Exchange proposes to add DEA fees for off-floor trading firms and its traders. Currently the PCX is the DEA for 162 firms. Of these 162 firms, 15 conduct extensive off-floor trading businesses. In the past, the PCX has outsourced the examinations of these 15 firms. The PCX intends to conduct these examinations in the future. The Exchange believes that, based upon its business model, the number of off-floor trading firms for which it will serve as DEA will increase substantially in the near future. Therefore, the Exchange is seeking to establish DEA fees that will allow for recovery of costs associated with these types of examinations. The

<sup>5</sup> See Securities Exchange Act Release No. 43020. (July 10, 2000) 65 FR 44558 (July 18, 2000).

Exchange proposes to require all current and future off-floor traders to pay an initial registration fee of \$75 per trader and an annual fee thereafter of \$250 per trader. The Exchange is also proposing to charge a \$2,000 per month Examination Fee to be paid by member organizations for which the Exchange is the DEA. An Exemption from these fees will be granted to any member operating from the PCX trading floor that has demonstrated that at least 25% of its income, as reflected on the most recently submitted FOCUS Report, was derived from on-floor activities. These fees will help to offset costs associated with providing examination services to off-floor trading firms. These include costs related to advising firms on financial reporting requirements and compliance with PCX and SEC rules. There are also extensive travel costs and initial set-up costs related to such off-floor firms. These fees are consistent with the fee structures established by other Exchange.<sup>6</sup>

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 furthers the objectives of section 6(b)(4)<sup>8</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

*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 Exchange has neither solicited nor received written comments on the proposed rule change.

<sup>6</sup> See Securities Exchange Act Release No. 43497 (March 6, 2000), 65 FR 14005 (March 15, 2000); Securities Exchange Act Release No. 42562 (March 22, 2000), 65 FR 16445 (March 28, 2000); Securities Exchange Act Release No. 43074 (July 26, 2000), 65 FR 47529 (August 2, 2000); Securities Exchange Act Release No. 43014 (July 6, 2000), 65 FR 43388 (July 13, 2000); Securities Exchange Act Release No. 43257 (September 6, 2000), 65 FR 55665 (September 14, 2000); and Securities Exchange Act Release No. 43279 (September 11, 2000), 65 FR 56606 (September 19, 2000).

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

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

**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 Act<sup>9</sup> and subparagraph (f)(2) of Rule 19b-4,<sup>10</sup> because it establishes or changes a due, fee, or other charge imposed by the Exchange. 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.

**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 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-00-41 and should be submitted by December 4, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 00-28947 Filed 11-9-00; 8:45 am]

**BILLING CODE 8010-01-M**

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).