

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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 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 CBOE. All submissions should refer to File No. SR-CBOE-00-48 and should be submitted by January 4, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43688; File No. SR-ISE-00-24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange LLC Relating to a Marketing Fee To Fund Payment for Order Flow

December 7, 2000.

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 December 1, 2000, the International Securities Exchange LLC (the "Exchange" or the

"ISE") 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 Exchange. 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 establish a new marketing fee to fund a payment for order flow program. This will be an interim fee, pending both approval of the Exchange's permanent payment for order flow program ("Permanent Program") and the establishment of fees under that program.³ The fee will be \$.75 a contract on all Primary Market Maker ("PMM") and Competitive Market Maker executions against customer orders. This fee will terminate at the earlier of January 15, 2001, or the effectiveness of a fee to fund the Permanent Program.

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 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 purpose of the proposed rule change is to provide a source of funding for a payment for order flow program. This will be an interim program expiring on the earlier of January 15, 2001, or Commission approval of the Permanent Program and the establishment of a fee to fund that Program.

³ On September 12, 2000, the Exchange filed with the Commission a rule change proposing to establish the Permanent Program. See Securities Exchange Act Release No. 43462 (October 19, 2000), 65 FR 64466 (October 27, 2000). By the terms of that proposal, the Exchange would be required to submit a separate rule change filing pursuant to Section 19(b)(3)(A) of the Act each time it sets the specific amount of any fees authorized under the program.

The Exchange will segregate the funds the fees generate proportionately to the groups of securities (or "bins") that generated the funds. The PMM in each bin will have full and exclusive discretion on how to use those funds to pay for order flow. The Exchange will make the payments to Electronic Access Members based on the PMM's directives.

The Exchange will be issuing appropriate circulars to its members emphasizing their disclosure and best execution obligations. The Exchange also will be providing to members various reports and other information demonstrating the quality of executions that they receive on the Exchange.

2. Statutory Basis

The Exchange states that the basis for the proposed rule change is the requirement under section 6(b)(4) of the Act⁴ that an exchange have an 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 Exchanges believes that the proposed rule change does not 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 not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, which establishes or changes a due, fee, or other charge applicable to members of the Exchange, has become effective pursuant to section 19(b)(3)(A)⁵ of the Act and subparagraph (f)(2) of Rule 19b-4 thereunder.⁶ At any time within 60 days of the filing of the 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,

⁴ 15 U.S.C. 78f(b)(4).

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(2).

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

The Commission has frequently raised serious concerns about payment for order flow and internalization.⁷ Payment for order flow is of concern because brokers who are paid to send their customers' orders to one exchange have a conflict of interest that may reduce their commitment to the duty they owe their customers to find the best execution available. While payment for order flow has been a common practice in the equities markets for some time, only recently has payment for order flow developed in the options markets. Despite these concerns, however, the ISE's proposal involves the imposition of a fee, and the Act gives exchanges wide latitude to establish, revise, and collect fees and other charges without prior Commission approval. The Commission invites interested persons to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In particular, the Commission asks persons who submit comments whether the payment for order flow facilitated by the ISE's proposal raises greater or different concerns than payment for order flow at other option exchanges. After receiving comments, and at any time within 60 days from the date the ISE filed its proposal, the Commission can decide to require the ISE to stop collecting the fee and await Commission approval of the Permanent Program.

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 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 ISE. All submissions should refer to File No. SR-ISE-00-24, and should be submitted by January 4, 2001.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43678; File No. SR-PCX-00-08]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Dissolution of the Appointments Committee

December 5, 2000.

I. Introduction

On March 20, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to eliminate the Options Appointment Committee and to transfer all of its powers to the Options Allocation Committee. On September 21, 2000, the Exchange submitted Amendment No. 1 to the proposal.³ The proposed rule change was published for comment in the **Federal Register** on October 4, 2000.⁴ No comments were received on the proposal. This order approves the proposal.

II. Description of Proposal

Currently, the PCX rules provide that it is the duty of the Options Appointment Committee to make recommendations to the Board of Governors regarding the appointment, assignment, retention, reassignment, transfer, and taking leave of the privileges to deal in and trade options to, by, and among members on the

Options Trading Floor.⁵ The Options Appointment Committee is also responsible for appointing Market Makers and appointing and approving Lead Market Makers ("LMMs").⁶ The Options Appointment Committee has the authority to relieve LMMs of their appointments, designate interim LMMs, and make determinations pertaining to LMM-related issues not within the jurisdiction of any other standing committee. Currently, the Options Allocation Committee allocates and reallocates issues and evaluates and monitors Market Makers, LMMs, and trading crowds. In the proposed rule change, the Exchange seeks to eliminate the Options Appointment Committee and to transfer all of its authority and duties to the Options Allocation Committee.

In this regard, the Exchange proposes to change all references to the "Options Appointment Committee" in PCX Rule 11.10(a) to the "Options Allocation Committee" and to transfer the language of PCX Rule 11.10(a), relating to the current duties of the Options Appointment Committee, to the Options Allocation Committee under new proposed PCX Rule 11.10(b)(2). The Exchange also proposes to renumber PCX Rule 11.10(b) as 11.10(a) and PCX Rule 11.10(c) as 11.10(b)(1). The Exchange proposes to change the references to the "Options Appointment Committee" in PCX Rules 6.35; 6.37; Commentary .08; 6.82(a)(1) and (3); 6.82(b)(1) and (2); 6.82(f)(3); 6.82(g)(1); and 6.82(h)(1) to the "Options Allocation Committee."

III. Discussion

After careful review, 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,⁷ and in particular with the requirements of section 6(b) of the Act.⁸ Specifically, the Commission believes that the proposed rule is consistent with the requirements of section 6(b)(5) of the Act⁹ because it is designed to help perfect the mechanism of a free and open market and is not designed to permit unfair discrimination between customer and brokers or dealers.

The proposed rule change centralizes all rules relating to the approval,

⁷ See Securities Exchange Act Release Nos. 43290 (September 13, 2000), 65 FR 57213 (September 21, 2000); 43228 (August 30, 2000), 65 FR 54330 (September 7, 2000); 43177 (August 18, 2000), 65 FR 51889 (August 25, 2000); 43112 (August 3, 2000), 65 FR 49040 (August 10, 2000); 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000); 34902 (October 27, 1994), 59 FR 55006 (November 2, 1994). See also Securities Exchange Act Release No. 43590 (November 17, 2000), 65 FR 75414 (December 1, 2000).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Cindy L. Sink, Senior Attorney, Regulatory Policy, PCX to Jennifer L. Colihan, Division of Market Regulation, Commission, dated September 20, 2000.

⁴ See Securities Exchange Release No. 43342 (September 26, 2000), 65 FR 59242.

⁵ See PCX Rules 6.35, 6.37, 6.82, and 11.10(c).

⁶ See PCX Rules 6.35 and 6.82.

⁷ In approving this rule proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).