

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45559; File No. SR-NSCC-2001-17]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Revising Fees

March 14, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 17, 2001, the National Securities Clearing Corporation ("NSCC") 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 primarily by NSCC. 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 proposed rule change revises NSCC's fee schedule.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>2</sup>

##### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to revise certain fees.<sup>3</sup> Certain trade recording, trade comparison, and trade clearance fees are being reduced for services provided on and after January 1, 2002. Certain fixed income fees are being increased for services provided on and after January 1, 2002. A trade rejection fee for fixed income is being introduced for services provided on and after January 1, 2002. And, an

account transfer rejects fee for the automated customer account transfer service (ACATS) is being introduced for services provided on and after March 1, 2002. Based upon estimated volume projections for 2002, it is anticipated that the overall effect on NSCC members of these changes will be to reduce fees paid to NSCC.

NSCC believes the proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among NSCC's participants.

##### (B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

##### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

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

Because the foregoing rule change establishes and changes fees imposed by NSCC, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and Rule 19b-4(f)(2).<sup>5</sup> At any time within sixty 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.

#### 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 Section, 450 Fifth Street NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NSCC. All submissions should refer to the File No. SR-NSCC-2001-17 and should be submitted by April 12, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45567; File No. SR-PCX-2001-23]

### Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Pacific Exchange, Inc. To Adopt New Sanctioning Guidelines for Enforcing Compliance With the Exchange's Options Order Handling Rules

March 15, 2002.

#### I. Introduction

On December 26, 2001, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), 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> a proposed rule change to adopt new sanctioning guidelines to assist the Exchange in enforcing compliance with its options order handling rules.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on

<sup>6</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 Exchange filed this proposed rule change pursuant to the requirements of Section IV.B.1 of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Exchange to adopt rules establishing, or modifying existing, sanctioning guidelines such that they are reasonably designed to effectively enforce compliance with options order handling rules. See Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3-10282 ("Order").

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

<sup>2</sup> The Commission has modified parts of these statements.

<sup>3</sup> [3]; NSCC's revised fee schedule is attached as Exhibit A to its filing.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

February 13, 2002.<sup>4</sup> No comments were received on the proposed rule change. This order approves the proposed rule change.

## II. Description of the Proposal

Currently, violations of the Exchange's firm quote, limit order display, and priority rules are treated as formal disciplinary actions and outside the scope of the Exchange's Minor Rule Plan ("MRP").<sup>5</sup> Violations of trade reporting and best execution obligations, however, are generally handled pursuant to the Exchange's MRP. While the MRP provides general guidance with respect to fine levels to be imposed for each distinct violation, nothing in the MRP prohibits the Exchange from removing a single violation of these obligations from the MRP and enforcing it as a formal disciplinary matter. The Exchange may also initiate a formal disciplinary action if it deems that a member or member organization's conduct amounts to a pattern or practice with respect to violations of the rules covered by its MRP or if its conduct in even a single instance is particularly egregious.

The Exchange proposes to establish specific fine levels for disciplinary actions initiated as a result of violations of the Exchange's rules relating to firm quote (Rule 6.86), limit order display (Rule 6.55), obligations of market makers, priority (Rule 6.75), best execution (Rule 6.46), and trade reporting (Rule 6.69). The proposed sanctioning guidelines would be used by various Exchange bodies that adjudicate disciplinary actions, including the Ethics and Business Conduct Committee, the PCX Board of Governors, the PCX Surveillance and Enforcement Departments, for in-house adjudications (collectively, "Adjudicatory Bodies"), in determining appropriate remedial sanctions. The proposal lists general principles that would be considered by the Adjudicatory Bodies in connection with the imposition of sanctions in all cases.<sup>6</sup> The proposed guidelines provide both a range of fines as well as non-monetary sanctions that could be assessed against offending members. Fine amounts

would differ depending on the number of disciplinary actions that have been brought by the Exchange against the particular member or member organization.<sup>7</sup> The proposed guidelines would also allow for non-monetary sanctions such as suspension, expulsion, or other sanctions in egregious cases.

## 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.<sup>8</sup> In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>9</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission also finds that the proposed rule change is consistent with Section 6(b)(6) of the Act,<sup>10</sup> which requires that the rules of an exchange provide that its members be appropriately disciplined for violations of exchange rules, the Act, and rules and regulations thereunder, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

Moreover, the Commission notes that the Exchange submitted a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where such violations are identified through the Exchange's automated surveillance systems<sup>11</sup>. The Commission believes that the compliance thresholds proposed in this letter provide a reasonable first step and should assist

<sup>7</sup> When determining whether an action is the first disciplinary action, the Adjudicatory Body would consider disciplinary actions with respect to violative conduct that occurred within the two years prior to the misconduct at issue. Recent acts of similar misconduct may be considered to be aggravating factors. For purposes of the proposed rule change, this two-year look-back provision would apply on a rolling basis. Telephone conversation between Hassan A. Abedi, Manager, Enforcement, PCX, and Sonia Patton, Special Counsel, Division, Commission, on February 6, 2002.

<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78f(b)(6).

<sup>11</sup> See supra note 6.

the Exchange in disciplining its members for violations of the Exchange's order handling rules. The Commission expects, however, that as compliance rates improve, the Exchange will adjust the compliance thresholds accordingly. Consequently, the Commission's approval of the proposed rule change is contingent on the Exchange providing notice to the Commission's Office of Compliance Inspections and Examinations of any future changes to this letter, and to any other sanctioning guidelines not codified in the Exchange's rules.

At this time, the Commission believes the proposed sanctioning guidelines are reasonably designed to effectively enforce compliance with the options order handling rules. Nevertheless, the Commission expects the Exchange to continue to evaluate the adequacy of the proposed sanctioning guidelines to determine whether they do, in fact, effectively enforce compliance with the options order handling rules.<sup>12</sup>

## IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-PCX-2001-23) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45578; File No. SR-PCX-2001-50]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Exchange, Inc. Relating to Rules on Collective Actions of Market Makers

March 15, 2002.

#### I. Introduction

On December 13, 2001, the Pacific Exchange, Inc. ("PCX" or "Exchange")

<sup>12</sup> The Commission's examination staff will also monitor the application of these guidelines to determine whether they do, in fact, improve member compliance with the options order handling rules.

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>4</sup> See Securities Exchange Act Release No. 45416 (February 7, 2002), 67 FR 6777.

<sup>5</sup> See PCX Rule 10.13.

<sup>6</sup> The Exchange submitted to the Commission a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where the violations are identified through the Exchange's automated surveillance system. See letter from Hassan A. Abedi, Manager, Enforcement, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 21, 2001.