

consistent with section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5),¹⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, 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 any written comments with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

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

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

The Exchange has requested that the Commission find good cause pursuant to section 19(b)(2) of the Act,¹⁵ for approving the establishment of the pilot for a three-month period ending on July 5, 2002 (or until such earlier time as the Commission grants the Exchange's request for permanent approval of the pilot), prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. The Exchange represents that accelerated approval will enable the Exchange to accommodate the timetable of listing fund families on the Exchange.¹⁶

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 the filing will also be available for inspection and copying at the principal offices of the NYSE. All submissions should refer to File No. SR-NYSE-2001-45 and should be submitted by April 30, 2002.

V. Commission Findings and Order Granting Partial Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, relating to the establishment of the pilot is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with the requirements under section 6(b)(5) of the Act¹⁷ 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 a national market system, and, in general, to protect investors and the public.¹⁸ The Commission believes that the proposed pilot strikes a reasonable balance between the Exchange's obligation to protect investors and their confidence in the market and the Exchange's obligation to perfect the mechanism of a free and open market by listing funds, including fund families, on the Exchange.

The Commission finds good cause for approving the pilot prior to the 30th day after publication in the **Federal Register**. The NYSE has represented that it desires to promptly implement the proposed rule change based on business

considerations¹⁹ and that accelerated approval will enable the Exchange to accommodate its timetable for listing fund families.²⁰ The Commission believes that accelerated approval will permit the Exchange to continue listing funds and accommodate the desire of fund families to list groups of closed-end funds on one marketplace, while allowing the Commission adequate time to consider the Exchange's proposal for permanent approval of the pilot.²¹ Accordingly, the Commission finds it appropriate and consistent with sections 6(b)(5) and 19(b)(2) of the Act²² for partially approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²³ the proposed rule change, as amended, (File No. SR-NYSE-2001-45) is approved on a pilot basis until July 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁴

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 02-8514 Filed 4-8-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45680; File No. SR-PCX-2002-16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Changes to the PCX's Schedule of Fees and Charges for Exchange Services

April 2, 2002.

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 March 20, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or

¹⁹ Telephone conversation between James F. Duffy, Senior Vice President, Elena Daly, Assistant General Counsel, NYSE; and Sonia A. Patton, Special Counsel, and Frank N. Genco, Attorney, Division, Commission, on April 02, 2002.

²⁰ See Amendment No. 2, *supra* note 4.

²¹ Approval of the three-month pilot period should not be interpreted as suggesting that the Commission is predisposed to approving the proposal on a permanent basis.

²² 15 U.S.C. 78f(b)(5) and 78s(b)(2).

²³ 15 U.S.C. 78s(b)(2).

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ See Amendment No. 2, *supra* note 4.

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ In approving this pilot, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 proposes to modify its “Schedule of Fees and Charges for Exchange Services” for services it will offer to ETP Holders³ and Sponsored Participants⁴ that use the new electronic trading facility of the Exchange and its wholly-owned subsidiary PCX Equities, Inc. (“PCXE”), called the Archipelago Exchange (“ArcaEx”). The Exchange also proposes to waive certain application processing and monthly fees relating to Equity Trading Permits (“ETPs”).

Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in brackets.

* * * * *

SCHEDULE OF FEES AND CHARGES FOR EXCHANGE SERVICES

* * * * *

ARCHIPELAGO EXCHANGE: TRADE RELATED CHARGES

EXCHANGE TRANSACTIONS

ETP Holders and Sponsored Participants⁵

Round Lots: \$0.003 per share (applicable to inbound orders executed against orders residing in the Book, and orders routed away and executed by another market center or participant)

Odd Lots: \$0.03 per share (applicable to any inbound odd-lot orders executed against orders residing in the Book, and orders routed away and executed by another market center or participant)

³ See PCXE Rule 1.1(n) (defining “ETP Holder”).

⁴ A “Sponsored Participant” means “a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to [PCXE] Rule 7.29.” See PCXE Rule 1.1(tt).

⁵ These transaction fees do not apply to: (1) Directed Orders, regardless of account type, that are matched within the Directed Order Process; (2) Directed Orders for the account of a retail public customer that are executed partially or in their entirety via the Directed Order, Display Order, Working Order, and Tracking Order processes (however, any unfilled or residual portion of a retail customer's order that is routed away and executed by another market center or participant will incur this transaction fee); (3) orders executed in the Opening Auction and the Market Order Auction; (4) Cross Orders; (5) commitments received through ITS; and (6) participants in the Nasdaq UTP Plan that transmit orders via telephone.

ARCHIPELAGO EXCHANGE: ETP FEES AND CHARGES

Monthly ETP Fee: \$2,000 (Waived)
ETP Application Fees—
Initial Processing Fee: \$350 (Waived)
Investigation Fee: \$100 fee per applicant for registration as ETP Holder (includes any control person listed on Schedule A of Form BD) or Market Maker Authorized Trader. Fee is also applicable to each Authorized Trader and its designated supervisor associated with an ETP Holder for which PCX is DEA.

Fingerprinting Fee: \$30 fee per applicant for registration as ETP Holder (includes any control person listed on Schedule A of Form BD) or Market Maker Authorized Trader. Fee is also applicable to each Authorized Trader and its designated supervisor associated with an ETP Holder for which PCX is DEA.

ARCHIPELAGO EXCHANGE: MARKET MAKER FEES AND CHARGES

Market Maker Transaction Credits—
Round Lots: \$0.001 per share (credit) (applicable to Q orders executed against other participants' orders)

Odd Lots: \$0.02 per share (credit) (applicable to any market maker that executes against an odd-lot order in the Odd Lot Tracking Order Process, as defined in PCXE Rule 7.31(g))

ARCHIPELAGO EXCHANGE: OTHER FEES AND CHARGES

Primary Connectivity Charge (includes one router and one circuit): \$0
Regulatory Fees—

FOCUS Filing Fee: \$25 annual filing fee for ETP Holders for which the PCX is the Designated Examining Authority

Registration Fee: \$50 annual fee for new applications, maintenance, or transfer of registration status for each Registered Representative and each Registered Options Principal (fee collected by NASD). Fee will not apply to an ETP Holder if such broker-dealer holds a regular PCX membership.

DEA Fee: \$2,000 monthly fee per firm \$250 annual fee per trader \$75 one-time registration fee per trader

Application for Approved Status Despite Grounds for Statutory Qualification: \$250 fee per application

* * * * *

PCX GENERAL OPTIONS MEMBERSHIP FEES

MEMBERSHIP APPLICATION FEES: \$350 initial fee (nonrefundable) \$100 renewal fee, within six months of termination

INITIAL MEMBERSHIP FEE: 5% of the average price of the last three membership sales, with a minimum of \$1,000 and a maximum of \$4,000

DUES \$750: per month per membership

OPTIONS ORIENTATION AND TEST FEE: \$1,000

[EQUITIES TEST FEE]: [50 per test]
TRANSFER OF MEMBERSHIP: \$250

for permanent intra-firm or inter-firm transfer \$100 for temporary intra-firm transfer (period less than 30 days) \$50 for one-day intra-firm transfer

PURCHASE OF ADDITIONAL MEMBERSHIP: \$200 per seat purchase

SALE OF MEMBERSHIP LEASE AGREEMENTS: \$200 per seat sale

Existing Member: \$350 per agreement
Reactivation of Terminated Member:

\$350 if within 12 months; if over 12 months, see INITIAL MEMBERSHIP FEE

ASAP® MEMBERSHIP FEE (Automated System Access Privilege): \$4,000 per year (non-refundable)

[PCX CONSTITUTION AND RULES]: [12 for members]

[(soft cover)]: [20 for nonmembers]
REGULATORY FEES—

Focus Filing Fee: \$25 annual filing fee for member organizations for which the Exchange is the Designated Examining Authority

Registration Fee: \$45 annual fee for new applications, maintenance, or transfer of registration status for each Registered Representative and each Registered Options Principal (collected by the NASD)

DEA Fee: ⁶ \$2,000 monthly fee per firm \$250 annual fee per trader \$75 one-time registration fee per trader

APPLICATION FOR APPROVED STATUS DESPITE GROUNDS FOR STATUTORY DISQUALIFICATION: \$250 fee per application

* * * * *

[PCX EQUITIES: TRADE-RELATED CHARGES]

[EXCHANGE TRANSACTIONS]

[Cumulative Billable Shares Per Month]

[First 4 million shares: \$0.31 per 100 shares]

[Next 10 million shares: \$0.17 per 100 shares]

[Next 8 million shares: \$0.09 per 100 shares]

[Over 22 million shares: \$0.05 per 100 shares]

⁶ These fees will apply to member organizations for which the Exchange is the Designated Examining Authority. Member organizations that can demonstrate that at least 25% of their income, as reflected on the most recently submitted FOCUS Report, was derived from on-floor activities will be exempt from these charges.

[All trades capped at 20,000 shares.]
[OFFBOARD TRADE RECORDING AND COMPARISON]

[\$0.05 per 100 shares for each side of individual stock, warrant, or rights for offboard trades submitted for comparison (comparison charges are capped at 20,000 shares per trade side; minimum of \$0.05, maximum of \$10).]

[\$0.03 per \$1,000 bond face value for each side of individual bond trade submitted for comparison (minimum of \$0.03, maximum of \$3).]

[AMEX-LISTED ISSUES]: [Trades in AMEX-listed equity issues are not subject to transaction or comparison charges.]

[PCX EQUITIES: FLOOR AND SPECIALIST FEES]

[ETP FEE]: [\$2,000 per month]
[SPECIALIST AND FLOOR BROKER FEE]: [\$2,000 per month]

[EQUITY ASAP HOLDER FEE]: [\$4,000 per year]

[FLOOR PRIVILEGE FEE]: [\$165 per month for each registered floor member and registered clerk]

[SPECIALIST FACILITY FEE]: [\$300 per month service fee per post]

[SPECIALIST SYSTEMS FEE]: [\$1,550 per month per post]

[WORKSTATION FEES]

[Specialists]: [First workstation (three PCs) included in Specialist Systems Fee]

[Brokers]: [\$175 per month]
[Additional PCs]: [\$175 per month per PC (plus additional wire service charges)]

[MARKET DATA FEE]

[Specialists]: [\$400 per month per post for base services, plus wire service charges]

[Brokers]: [\$200 per month per broker for base services, plus wire services charges]

[SUPPLEMENTAL SPECIALIST POST FEE]: [\$6,750 per month per consolidated post]

[ALTERNATE SPECIALIST FEES]

[\$200 initial registration fee]
\$100 initial fee for each issue traded]
[\$50 ongoing monthly fee for each issue traded]

[\$5 transaction charge per outgoing offboard order (charge for outgoing orders offset by cumulative credit for non ITS alternate specialist executions)]

[FLOOR BROKER BOOTHS]

[\$125 per month for small booth]
[\$250 per month for large booth]
[\$375 per month for area booth]

[INTERMARKET TRADING SYSTEM (ITS)]

[\$0.005 per share on net outgoing specialist principal ITS trades, excluding preopening responses (charge for outgoing trades offset by cumulative credit for incoming trades)]

[CARD ACCESS FEE]

[\$40 per month for member firm employees needing access to the equities floor, but who do not pay a floor privilege fee]

[\$100 replacement fee]

[TELEPHONES]

[\$60 per month per 32-button phone]

[(Los Angeles only)]

[\$45 per month per 16-button phone]

[\$9 per month per line]

[\$1 per month per appearance]

[WIRE SERVICES]: [Pass-through fees]

[PACIFIC CLEARING CORPORATION]

[Post Cashiering]: [\$2,150 per month]

[Post Clearing]: [\$2,350 per month]

[PCC Symbol Fee]: [\$175 per symbol per month charged to non-specialist symbols with trade comparison activity]

[Special Processing Fee]: [\$20 per balance order for dually traded, NSCC/DTC-ineligible items (specialists only)]

* * * * *

PCX [EQUITIES AND] OPTIONS: REPORT FEES

[EQUITIES REPORTS]

[Transaction Blotter Report]

[No fee for first copy]

[\$30 per month for each additional copy]

[Security Ledger Report]

[No fee for first copy]

[\$30 per month for each additional copy]

[Trade Activity Data Extract]: [\$150 per month per clearing symbol]

[Security Ledger Data Extract]: [\$150 per month plus \$250 initial set-up fee]

[MIS Reports (various)]: [\$50 per month plus development and set-up costs]

OPTIONS REPORTS

Standard Report Package: \$55 per month per symbol, plus \$0.0055 per contract, to a maximum of \$550 per month

User Activity Extracts (Batch): \$0.0075 per trade plus development and set-up costs

Online Data Extract: \$500 per month
SPECIALIZED REPORT, PRINTING AND PROCESSING: Development and production costs

* * * * *

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 PCX proposes to modify its fee schedule to reflect the variety of services it proposes to offer to ETP Holders and Sponsored Participants (collectively "Users") that access ArcaEx. The amended fee schedule will include transaction fees and charges for a variety of other services, including the installation and maintenance of certain equipment. PCX also proposes to adopt a transaction credit for registered Market Makers who enhance liquidity by entering Q Orders⁷ that interact against other Users' orders on ArcaEx. In addition, the PCX represents that, because it is PCXE's intent to operate the ArcaEx facility in place of the PCXE's traditional floor trading environment, it proposes to eliminate all of the current fees and charges related to floor trading of equity securities on the Exchange. The proposed changes to the Exchange's "Schedule of Fees and Charges for Exchange Services" are discussed below.

a. Background

On October 25, 2001, the Commission approved a proposed rule change by the PCX to establish ArcaEx, a new electronic trading facility of PCXE.⁸ ArcaEx is an electronic securities trading facility for use by ETP Holders and their customers. ArcaEx will provide automatic order execution capabilities in securities listed or traded on the PCXE, and will operate in place

⁷ Q Orders are limit orders that are submitted to ArcaEx by a Market Maker in those securities in which the Market Maker is registered to trade. See PCXE Rule 7.31(k).

⁸ See Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (File No. SR-PCX-00-25) (order approving the ArcaEx as the equities trading facility of PCXE).

of PCXE's traditional floor trading environment. PCX and PCXE will be responsible for all regulatory functions related to the facility, and Archipelago Exchange, L.L.C. ("Archipelago"), a subsidiary of Archipelago Holdings, L.L.C., will be responsible for the business of the facility to the extent that these activities are not inconsistent with the regulatory and oversight functions of PCX and PCXE.

b. Proposed Fees

The Exchange proposes to modify its fees applicable to its equities business by adopting transaction fees and other charges relating to the ArcaEx facility. The proposed fees will be divided into four principal categories. The first category will relate to transaction fees. The second category will include certain administrative fees in connection with the ETP application process. The third category will cover fees, charges, and credits applicable to registered Market Makers. The fourth category will include all other fees, charges, and credits. The items in these categories are discussed separately below.

i. Transaction Fees

(A) General

The Exchange proposes to charge all Users a transaction fee of \$0.003 per share for orders that take liquidity from the ArcaEx Book⁹ and for orders that are routed away to another market center or participant.¹⁰ In other words, any order entered by a User that executes against an order residing in the Book, or any unfilled or residual portion of an order that is routed away and executed by another market center or participant, will incur this transaction fee. The Exchange represents that this proposed fee structure will have the effect of attracting resting limit orders into the Book, which will help promote liquidity, transparency, and, in turn, price discovery. The Exchange notes that this proposed transaction fee will not apply to: (1) Directed Orders, regardless of account type, that are

⁹ ArcaEx will maintain an electronic file of orders, called the ArcaEx Book, through which orders will be displayed and matched. The ArcaEx Book will be divided into four components, called processes—the Directed Order Process, the Display Order Process, the Working Order Process, and the Tracking Order Process. See PCXE Rules 7.36 and 7.37, for a detailed description of these order execution processes.

¹⁰ The fifth step of the ArcaEx execution algorithm involves routing orders away to other market centers or market participants. This will occur if there are no opportunities to match an order within ArcaEx, or to access the best price available in the market. Routing is available only to those ETP Holders who have entered into a Routing Agreement. See PCXE Rule 7.37(d).

matched within the Directed Order Process;¹¹ (2) Directed Orders for the account of a retail public customer that are executed partially or in their entirety via the other order processes;¹² (3) orders executed in the Opening Auction and the Market Order Auction;¹³ (4) Cross Orders;¹⁴ (5) commitments received through the Intermarket Trading System; and (6) participants in the Nasdaq/National Market System/Unlisted Trading Privileges Plan that transmit orders via telephone.¹⁵

(B) Odd and Mixed Lots

The Exchange proposes to charge a fee of \$0.03 per share for executed orders that are initially entered as odd lot orders (this includes the odd lot portion of a mixed lot). This charge will not apply to odd lot orders that were created as a result of a partial fill of a round lot order.

ii. ETP Fees and Charges

The PCX, initially, proposes not to charge an ETP application fee or a monthly ETP fee. The PCX, however, proposes to assess a \$100 fee for the required background check and a \$30 fingerprinting fee per applicant for registration as an ETP Holder (including any control person listed on Schedule A of Form BD) or Market Maker Authorized Trader.¹⁶ The Exchange represents that the background check and fingerprinting fees will also apply

¹¹ The Directed Order Process is the first step in the ArcaEx execution algorithm. Through this process, Users may direct an order to a Market Maker with whom they have a relationship and the Market Maker may execute the order. To access this process, the User must submit a Directed Order, which is a market or limit order to buy or sell that has been directed to the particular market maker by the User. See PCXE Rule 7.37(a) (description of "Directed Order Process").

¹² If a retail public customer order has not been executed in its entirety after progressing through the Directed Order, Display Order, Working Order, and Tracking Order Processes, the remaining portion of such order, if eligible, will be routed to another market center or participant. Any executed portion of that order will be subject to the proposed transaction fee.

¹³ See PCXE Rules 7.35(b) and (c) for a detailed description of the Opening Auction and the Market Order Auction, respectively.

¹⁴ A Cross Order is defined as a two-sided order with instructions to match the identified buy-side with the identified sell-side at a specified price (the cross price), subject to price improvement requirements. See PCXE Rule 7.31(s).

¹⁵ See Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Exchange-Listed Nasdaq/National Market System Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, Section IX ("Market Access"), Securities Exchange Act Release No. 45081 (November 19, 2001), 66 FR 59273 (November 27, 2001).

¹⁶ See PCXE Rule 1.1(v) (defining "Market Maker Authorized Trader").

to each Authorized Trader¹⁷ (including any person that is responsible for supervising such Authorized Trader) that is associated with an ETP Holder for which the PCX is the Designated Examining Authority ("DEA"). The Exchange represents that these fees are intended to recover the Exchange's administrative expenses in connection with the ETP application process.

iii. Market Maker Transaction Credits

Under the proposed fee structure, registered Market Makers will receive a credit of \$0.001 per share for any Q Orders they have entered that are executed against Users' orders. In addition, \$0.02 per share will be credited to any Market Maker that executes against an odd lot order in the Odd Lot Tracking Order Process.¹⁸ The Exchange represents that these credits are intended to provide an incentive to firms to become Market Makers and to build liquidity in the ArcaEx Book, which will foster price competition and order interaction.

iv. Other Fees and Charges

(A) User Connectivity Fees

The Exchange represents that Archipelago will be responsible for User connectivity to ArcaEx. This will include initiating contracts, trading connections, and User set-up. Only those Users that have been approved by PCXE are authorized to enter into transactions on ArcaEx. There will be no charge for the primary connection and router to the ArcaEx trading facility; however, redundant or additional connections will incur a charge. Those Users who wish to obtain additional connections to the facility will have to pay the actual charges incurred by Archipelago or the service provider retained for the work being performed.

(B) Regulatory Fees

PCX proposes to adopt the following regulatory fees: (1) a \$25 annual FOCUS filing fee for ETP Holders for which the Exchange is the DEA; (2) a \$50 annual fee to all registered representatives and registered options principals for maintenance, new applications, or transfer of registration status;¹⁹ (3) DEA

¹⁷ See PCXE Rule 1.1(g) (defining "Authorized Trader").

¹⁸ The Tracking Order Process is the fourth step of the ArcaEx execution algorithm. If the unfilled marketable order (or portion of an order) that enters the Tracking Order Process is an odd lot, such order will be executed against a market maker that is registered as an Odd Lot Dealer. See PCXE Rules 7.31(g) and 7.37(c).

¹⁹ The Exchange represents that, to avoid duplicative billing, the annual fee charged to all registered representatives and options principals

fees for trading firms and their traders;²⁰ and (4) a \$250 fee per application for approved status despite grounds for statutory disqualification. The PCX represents that these fees are consistent with the PCX's current fee structure, and are intended to offset costs related to regulatory oversight and enforcement.

c. Applicability of Existing PCXE Fees

In addition to the new proposed fees set forth above, the PCX proposes to delete from its current fee structure the following fees, which relate primarily to floor trading and specialists or are otherwise inapplicable to the new trading environment: (1) Transaction and comparison charges (including fees that are paid by specialists firms to the Pacific Clearing Corporation for providing trade settlement and processing services); (2) systems and communication equipment related charges (including booth fees and market data services provided by third party vendors to ETP Firms through the PCXE on a pass through basis); and (3) charges for various trade information and clearing reports that are produced by PCXE for ETP Firms.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,²¹ in general, and Section 6(b)(4) of the Act,²² in particular, in that it provides 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 that is not

will not apply to an ETP Holder if such broker-dealer holds a regular PCX membership.

²⁰The DEA fees include a \$2,000 monthly fee per firm, a \$250 annual fee per trader, and a \$75 one-time registration fee per trader.

Under the current PCX fee schedule, an exemption from these DEA 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. This exemption has not been included in the proposed fee schedule for ArcaEx because it is inapplicable to the new trading environment. The PCX indicated that it intends to retain this exemption for options. A technical correction was made to the proposed rule text to indicate the retention of this exemption under the "PCX General Options Membership Fees." Telephone conversation between Peter D. Bloom, Regulatory Policy, PCX, and Sapna C. Patel, Attorney, Division of Market Regulation, Commission, on April 1, 2002.

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(4).

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

No written comments were solicited or received with respect to the proposed rule change.

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)²³ of the Act and subparagraph (f)(2) of Rule 19b-4²⁴ thereunder 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.²⁵

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 the PCX. All submissions should refer to File No. SR-PCX-2002-16 and should be submitted by April 30, 2002.

²³ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁴ 17 CFR 240.19b-4(f)(2).

²⁵ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on March 20, 2002, the date the PCX filed the proposed rule change. See 15 U.S.C. 78s(b)(3)(C).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁶

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02-8486 Filed 4-8-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45681; File No. SR-PHLX-2002-19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Increasing the Amount of the Late Charge Imposed Pursuant to Exchange Rule 50

April 2, 2002.

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 March 15, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 the Phlx. 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 Phlx proposes to amend the amount of the late charge that is imposed by the Phlx as set forth in Phlx Rule 50. Currently, the late charge is set at a rate of 1 percent simple interest for each thirty-day period or fraction thereof, calculated on a daily basis, during which accounts payable to the Exchange remain outstanding at least thirty-one days. The Exchange proposes to increase the amount of the late charge from 1 percent to 1.5 percent. All other provisions relating to the Exchange's late charge as specified in Rule 50 would remain the same.

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and the Commission.

²⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.