

Claim. This has accelerated the claims review process, so that claims can be served promptly after filing.³ Accordingly, the Statement of Claim may not contain details on the evidence to be presented at the hearing.

Rule 10314(b)(1) currently provides, however, that the "Answer shall specify all available defenses and relevant facts thereto that will be relied upon at the hearing," and Rule 10314(b)(2)(B) provides that a "Respondent who fails to specify all available defenses and relevant facts in such party's Answer may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting such facts or defenses not included in such party's Answer at the hearing."⁴ Similarly, Rule 10314(b)(2)(A) provides that "Respondent who pleads only a general denial as an Answer may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting any facts or defenses at the time of the hearing."

The National Arbitration and Mediation Committee (NAMC) of NASD Dispute Resolution⁵ determined that the above provisions could place the respondent at an unfair disadvantage because the initial claim may be quite brief, but may be expanded substantially by the time of the hearing. Based on Rule 10314(b), the arbitrators may prevent the respondent from introducing additional facts or defenses to the expanded claim. The NAMC recommended, therefore, that Rule 10314(b)(1) be amended to provide that the Answer should only be required to specify all relevant facts and available defenses to the Statement of Claim submitted, which would make the requirement consistent with the streamlined claims procedure; and that

³ Although the Uniform Forms Guide (last amended April 2001) (http://www.nasdaq.com/pdf-text/uniform_forms_guide.pdf) continues to recommend that the Statement of Claim set forth the details of the dispute, informal guidance for parties on the Dispute Resolution Website now states, "A claim is reviewed for the minimum requirements of a properly signed Submission Agreement, proper fees, and sufficient copies of the Statement of Claim. The Statement of Claim should include the dollar amount of damages requested, and the type of claims being made. Any deficiencies can delay the service of the claim." Arbitration Case Flow (http://www.nasdaq.com/arb_case_flow.asp) (visited May 3, 2002).

⁴ The term "defenses" in Rule 10314 is understood to include not only defenses to the specific allegations in the Statement of Claim, but also any affirmative defenses that the respondent may wish to set forth.

⁵ NASD Dispute Resolution states that the NAMC includes representation from public investors, from the securities industry, and from the neutrals serving in the NASD Dispute Resolution forum. NASD Dispute Resolution additionally states that this diverse composition ensures a neutral approach in the administration of the forum.

Rule 10314(b)(2)(A) be amended to apply only to general denials to pleadings that state specific facts and contentions.

2. Statutory Basis

NASD Dispute Resolution believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,⁶ which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Dispute Resolution believes that the proposed rule change will protect investors and the public interest by harmonizing the requirements for claimants and respondents.

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

NASD Dispute Resolution does not believe that the proposed rule change will result in 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

Written comments were neither solicited nor received.

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 self-regulatory organization consents, the Commission will:

A. By order approve the 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 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 NASD.

All submissions should refer to File No. SR-NASD-2002-62 and should be submitted by July 11, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46070; File No. SR-PCX-2002-28]

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

June 12, 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 May 29, 2002, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which the PCX has prepared. 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 PCX, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), is proposing to modify its fee schedule for services provided to Equities

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁶ 15 U.S.C. 78o-3(b)(6).

Trading Permit ("ETP") Holders and Sponsored Participants³ on the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE. The text of the proposed rule change is available at the PCX 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 PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had 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 the statements.

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

The PCX, through its wholly owned subsidiary PCXE, proposes to amend its fees charged to ETP Holders and Sponsored Participants (collectively "Users") that access the ArcaEx trading facility to: (1) Reduce the per-share transaction fee charged to Users that take liquidity from the ArcaEx Book; (2) increase the per-share transaction fee for orders that are routed away and executed by another market center or participant; (3) clarify the application of the current odd-lot transaction fee; (4) introduce a liquidity provider transaction credit for Users; (5) increase the amount of the per-share transaction credit provided to registered market makers for any "Q Orders"⁴ executed against Users' orders; (6) adopt a new per-share transaction fee for processing ArcaEx market makers' "drop copies"⁵ of their trades executed on other market centers; (7) introduce a mechanism for sharing market data revenue with Users; and (8) establish User connectivity fees for ArcaEx. The proposed changes to the

³ 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).

⁴ Q Orders are limit orders that a market maker submits to ArcaEx in securities in which the market maker is registered to trade. See PCXE Rule 7.31(k).

⁵ A "drop copy" is an electronic report of a transaction for a market maker's account that is executed on another market center and that has been prepared for informational purposes (e.g., market maker inventory tracking, surveillance audit trail).

PCX's Schedule of Fees and Charges are discussed below.

On October 25, 2001, the Commission approved the PCX's proposed rule change to establish ArcaEx as a new electronic trading facility of PCXE.⁶ ArcaEx is a fully electronic securities trading facility for use by ETP Holders and their customers. The PCX and PCXE are responsible for all regulatory functions related to the facility, and Archipelago Exchange, L.L.C., a subsidiary of Archipelago Holdings, L.L.C., is responsible for the business of the facility to the extent that these activities are not inconsistent with the regulatory and oversight functions of the PCX and PCXE. ArcaEx commenced operations on March 22, 2002, replacing the PCXE's traditional trading floor facilities.

Summary of Proposed Fee Changes Transactions Fees

The PCX currently charges all Users a transaction fee of \$0.003 per share for orders that extract liquidity by responding to, and executing against, orders residing in the ArcaEx Book.⁷ The PCX is proposing to reduce this transaction fee to \$0.002 per share, but it will continue to apply the current fee of \$0.003 per share for transactions executed in Exchange-Traded Fund shares ("ETFs"). The PCX believes that this fee change will provide incentives for increasing order flow to ArcaEx and will attract resting limit orders into the ArcaEx Book, which will help promote liquidity, transparency, and in turn, price discovery. The PCX notes that the following items continue to be excluded from this fee: (1) Directed orders, regardless of account type, that are matched within the directed order process;⁸ (2) directed orders for the account of a retail public customer that are executed partially or in their entirety

⁶ See Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR-PCX-00-25).

⁷ ArcaEx maintains an electronic file of orders, called the ArcaEx Book, through which orders are displayed and matched. The ArcaEx Book is 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.

⁸ 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 the User directs to the a particular market maker. See PCXE Rule 7.37(a) (description of the directed order process).

via the other order processes;⁹ (3) orders executed in the Opening Auction and the Market Order Auction;¹⁰ (4) cross orders;¹¹ (5) commitments received through the Intermarket Trading System ("ITS"); and (6) participants in the Nasdaq/National Market System/Unlisted Trading Privileges Plan ("Plan") that transmit orders via telephone.¹²

The PCX is also proposing to increase from \$0.003 to \$0.004 the per-share transaction fee charged to any unfilled or residual portion of a User's order (including a retail public customer order)¹³ that is routed away via ArcaEx and executed by another market center or participant. The PCX believes that this fee is reasonable and is structured to allocate fairly the costs of operating the ArcaEx facility. Consistent with the terms of the ITS Plan, the PCX will not apply this transaction fee for commitments sent through ITS.

Odd and Mixed Lots

The PCX proposes to amend its fee schedule to clarify that *all* odd-lot orders (including the odd-lot portion of a mixed lot) are subject to the \$0.03 per-share transaction fee. This fee is not restricted to inbound odd-lot orders as incorrectly reflected in the current fee schedule. The PCX notes that odd-lot orders that are created as a result of a partial fill of a round lot will continue to be excluded from this fee.

Market Maker Transaction Credits

Currently, registered market makers receive a credit of \$0.001 per share for any Q Orders they have entered that are executed against Users' orders.¹⁴ The PCX is proposing to increase this credit

⁹ 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 of \$0.004 per share, as discussed below.

¹⁰ See PCXE Rules 7.35(b) and (c) for a detailed description of the Opening Auction and the Market Order Auction, respectively.

¹¹ 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).

¹² 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").

¹³ See footnote 9, *supra*.

¹⁴ The current \$0.002 per share credit that is provided to any market maker that executes against an odd-lot order in the Odd Lot Tracking Order Process will remain in effect.

to \$0.0015 per share. This increase in credit is designed to provide an additional incentive to firms to become market makers and to build liquidity in the ArcaEx Book, which will foster price competition and order interaction.

Market Maker "Drop Copy" Processing Fee

The PCX is proposing to adopt a new \$0.001 per-share fee for processing ArcaEx market makers' drop copies¹⁵ of their transactions executed on other market centers. In addition, the PCX is clarifying that such off-board trades are not eligible for the market maker transaction credit or User transaction credit. The PCX believes that this fee is reasonable and is structured to allocate fairly the costs of operating the ArcaEx facility.

User Transaction Credit

The PCX is proposing to establish a transaction credit for Users who provide liquidity in the ArcaEx Book. Under the proposal, a User that enters a resting limit order into the Book that is subsequently executed against an incoming marketable order in a listed equity security that is traded on ArcaEx (on an unlisted or listed basis) will receive a credit of \$0.001 per share. In the case of an ETF, a User that provides liquidity will receive a transaction credit of \$0.002 per share. This credit is designed to enhance market efficiency and fairness by offering incentives to market participants that provide liquidity through ArcaEx. Any credit received by a User will be applied to reduce any charges payable to ArcaEx. Any remaining balance may be paid directly to the User.

Market Data Revenue Sharing Credit

The PCX proposes to share a portion of its gross revenues derived from market data fees (*i.e.*, tape revenue) with (i) any User that provides liquidity by entering a resting limit order into the ArcaEx Book that is then executed against an incoming marketable order within the display order, working order, or tracking order processes; (ii) any market maker that executes against a directed order within the directed order process;¹⁶ and (iii) any User that represents all of one side and all or a portion of the other side of a cross-order execution.¹⁷ Under the proposal, any User that meets the requirements stated in subsection (i), above, will receive a 50 percent tape revenue credit per qualifying transaction that is reported

over the Consolidated Tape Association's Network. Any User that meets the requirements stated in subsections (ii) and (iii), above, will receive a 100 percent tape revenue credit per qualifying transaction. This proposal is similar to tape revenue sharing programs already established by Nasdaq and various exchanges.¹⁸ The proposed tape revenue credit is intended to create additional incentives to participants to provide liquidity on the ArcaEx facility.

The proposed market data revenue sharing credit will become operative on a pilot basis, commencing on June 1, 2002 and ending on June 28, 2002. During the pilot period, the PCX will assess the effect of the rule change on market participants and may file additional changes to the level or structure of its fees.

User Connectivity Fees

Users are able to route orders to the ArcaEx trading facility via RealTick, a proprietary front-end workstation, or the FIX application programming interface. Currently, the PCX does not charge Users for the costs incurred in establishing the initial line connection (this includes one router and one circuit) to the ArcaEx trading facility. The PCX is now proposing to adopt an initial connectivity fee that would consist of a variable pass-through charge that Users would pay for access to the system. These charges relate to the hardware, software, and network costs associated with connecting to the system. Users would pay the actual charges incurred by the Archipelago Exchange, L.L.C., the operator of the ArcaEx facility, or the service provider retained for the work being performed. The PCX notes that Users that wish to obtain redundant or additional connections would continue to be assessed this variable pass-through charge. The PCX also proposes to charge Users that access the ArcaEx trading system via the RealTick interface a monthly fee of \$300 for each workstation.

The PCX believes that the proposed rule change is consistent with section 6(b) of the Act,¹⁹ in general, and section 6(b)(4) of the Act,²⁰ in particular, in that

it provides for the equitable allocation of reasonable dues, fees, and other charges among PCX members.

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

The PCX 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 PCX neither solicited nor received written comments on the proposed rule change.

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

The proposed rule change establishes or changes a due, fee or other charge, and therefore has become effective pursuant to section 19(b)(3)(A) of the Act²¹ and Rule 19b-4(f)(2) thereunder.²² At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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 Room. Copies of the filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No.

¹⁵ See footnote 5, *supra*.

¹⁶ See footnote 8, *supra*.

¹⁷ See footnote 11, *supra*.

¹⁸ See, e.g., Securities Exchange Act Release No. 45642 (March 26, 2002), 67 FR 15436 (April 1, 2002) (SR-CSE-2002-03); Securities Exchange Act Release No. 45342 (January 28, 2002), 67 FR 5019 (February 1, 2002) (SR-NASD-2001-96); Securities Exchange Act Release No. 41238 (March 31, 1999), 64 FR 17204 (April 8, 1999) (SR-CSE-99-03); Securities Exchange Act Release No. 40591 (October 22, 1998), 63 FR 58078 (October 29, 1998) (SR-BSE-98-9).

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(4).

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f)(2).

SR-PCX-2002-28 and should be submitted by July 11, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46071; File No. SR-PCX-2002-27]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. To Adopt a New Order Modifier Called "Timed Order" and To Adopt a New Interpretation Under PCXE Rules 1.1(r) and 7.37

July 12, 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 May 20, 2002, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which the PCX has prepared. On June 7, 2002, the PCX filed an amendment to the proposed rule change. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change, as amended.

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

The PCX, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its rules governing the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE, by: (1) Adopting a new order modifier called a "Timed Order" for use by ETP Holders and Sponsored Participants;³ (2) amending its interpretation of PCXE Rule 7.37 to clarify the manner in which NOW Orders and Primary Only Orders will be treated on the ArcaEx facility when the routing of such orders to other market centers or market participants is required; (3) clarifying its definition of "Indicative Match Price" as it relates to

the opening auctions; and (4) making several minor technical rule changes to correct grammatical or typographical errors. The text of the proposed rule change is as follows:

Text of the Proposed Rule Change⁴

Rule 1—Definitions

Rules 1.1(a)-(q)—No change.

Indicative Match Price

(r) For the purposes of the Opening Auction, the Market Order Auction and the Trading Halt Auction, as the case may be, the term "Indicative Match Price" shall mean for each security (1) the price at which the maximum volume of shares are executable; or (2) if there are two or more prices at which the maximum volume of shares are executable, the price that is closest to the closing price of the previous trading day's normal market hours (*or, in the case of a Trading Halt Auction, the last sale during normal market hours*), as determined by the Consolidated Tape *will establish the opening price, provided that if such price would trade through an eligible Limited Price Order designated for such auction, then the opening price will occur at the best price level available where no trade through occurs.*

(s)-(aaa)—No change.

Rule 7—Equities Trading

Cancellation of [Revisions in] Transactions

Rule 7.10—No change.

Short Sales

Rule 7.16(a)-(c)—No change.

(d) Exceptions. The provisions of subsection (a) hereof shall not apply to:

(1)-(8)—No change.

(9) Any sale by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any lay-off sale by such a person in connection with a distribution of securities through rights or a standby underwriting commitment[.]; or

(10)—No change.

(e)-(f)—No change.

Orders and Modifiers

Rule 7.31(a)-(p)—No change.

(q) *Timed Order. A limit order to buy or sell that is to remain in effect until a specified time, after which such order*

or the portion thereof not executed is to be treated as cancelled. The specified time interval of such order may remain in effect for one or more consecutive trading sessions for that particular day only. [Reserved.]

(r)-(x)—No change.

Opening Session Auctions

Rule 7.35(a)-(d)—No change.

(e) *Transition to Core Trading Session.*

(1)—No change.

(2) Market orders entered after 6:28 am (Pacific Time) and before 6:30 am (Pacific Time), which are eligible for either the Market Order Auction or the Core Trading Session, shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later, unless otherwise provided in Rule 7.35 [7.30](c)(2)(C).

(3)—No change.

(f)—No change.

Order Execution

Rule 7.37. Subject to the restrictions on short sales under Rule 10a-1 under the Exchange Act, like-priced orders, bids and offers shall be matched for execution by following Steps 1 through 5 in this Rule; provided, however, for an execution to occur in any Order Process, the price must be equal to or better than the NBBO, unless the Archipelago Exchange has routed orders to [all] away markets at the NBBO, *where applicable (however, a User may submit a NOW Order or Primary Only Order that may be routed to an away market without consideration of the NBBO).*

(a)-(e)—No change.

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 discussed any comments it had 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

On October 25, 2001, the Commission approved the PCX's proposal to

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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).

⁴ New text is italicized and deleted text is in brackets.