

The Commission believes that these amendments merely serve to clarify certain provisions of the proposed rules, and make technical changes that do not raise substantive issues. Accordingly, the Commission believes that there is good cause, consistent with Section 19(b) of the Act,<sup>18</sup> to approve Amendment Nos. 2 and 3 on an accelerated basis.

**VI. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 2 and 3, including whether they are 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 Exchange. All submissions should refer to File No. SR-NASD-2002-40 and should be submitted by November 12, 2002.

*Market Data Revenue Sharing Credit*

*Tape A Securities:*

<i>Liquidity Provider Credit</i> .....	<i>40% tape revenue credit per qualifying trade (applicable to limit orders that are residing in the Book and that execute against in-bound marketable orders).</i>
<i>Directed Order</i> .....	<i>40% tape revenue credit per qualifying trade (applicable to any market maker that executes against a Directed Order within the Directed Order Process, as defined in PCXE Rule 7.37(a)).</i>
<i>Cross Order</i> .....	<i>40% tape revenue credit per qualifying trade (applicable to any Cross Order, as defined in PCXE Rule 7.31(s), where the ETP Holder or Sponsored Participant represents all of one side of the transaction and all or a portion of the other side).</i>

*Tape B Securities:*

<i>Liquidity Provider Credit</i> .....	<i>50% tape revenue credit per qualifying trade (applicable to limit orders that are residing in the Book and that execute against in-bound marketable orders [in Tape A or B securities]).</i>
<i>Directed Order</i> .....	<i>50% tape revenue credit per qualifying trade (applicable to any market maker that executes against a Directed Order [in a Tape A or B security] within the Directed Order Process, as defined in PCXE Rule 7.37(a)).</i>

<sup>18</sup> 15 U.S.C. 78s(b).  
<sup>19</sup> 15 U.S.C. 78s(b)(2).  
<sup>20</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> See October 10, 2002 letter from Peter D. Bloom, Regulatory Policy, PCX, to Joseph Morra, Special Counsel, Division of Market Regulation

**VII. Conclusion**

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

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-NASD-2002-40), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-46662; File No. SR-PCX-2002-61]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. To Amend a Market Data Revenue Sharing Program for Certain Transactions on the PCX in Tape A Securities**

October 15, 2002.

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 September 30, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange"),

through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), 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. On October 11, 2002, the PCX amended the proposal.<sup>3</sup> The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>4</sup> and Rule 19b-4(f)(6)<sup>5</sup> thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The PCX, through PCXE, proposes to modify its fee schedule for services provided to ETP Holders<sup>6</sup> and Sponsored Participants<sup>7</sup> on the Archipelago Exchange, the equities trading facility of PCXE. Specifically, the Exchange proposes to amend its market data revenue sharing program for Tape A securities<sup>8</sup> traded on the Exchange. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

**Schedule of Fees and Charges for Exchange Services**

\* \* \* \* \*

**Archipelago Exchange: Other Fees and Charges**

("Division"), Commission ("Amendment No. 1"). In Amendment No. 1, the PCX provided a new Exhibit A that replaces in its entirety the text of the proposed rule that was included in the original filing. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on October 11, 2002, the date that the PCX filed Amendment No. 1.  
<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).  
<sup>6</sup> See PCXE Rule 1.1(n).  
<sup>7</sup> A "Sponsored Participant" is "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).  
<sup>8</sup> Tape A securities include securities that are listed for trading on the New York Stock Exchange.

Cross Order ..... 50% tape revenue credit per qualifying trade (applicable to any Cross Order, as defined in PCXE Rule 7.31(s), where the ETP Holder or Sponsored Participant represents all of one side of the transaction and all or a portion of the other side [in a Tape A or B security].

\* \* \* \* \*

## 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 its proposal and discussed any comments it received regarding the proposal. 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

#### 1. Purpose

The PCX, through PCXE, proposes to amend its fees charged to ETP Holders and Sponsored Participants (collectively "Users") that access the ArcaEx trading facility by amending its program for sharing with Users market data revenue derived from transactions in Tape A securities.

#### Background

On May 28, 2002, the Exchange filed with the Commission a proposed rule change to implement, on a pilot basis through June 28, 2002, a mechanism for sharing market data revenue with Users on ArcaEx.<sup>9</sup> The proposed rule change became effective upon filing pursuant to Section 19(b)(3)(A) of the Act,<sup>10</sup> and the PCXE implemented the program on June 1, 2002. On June 27, 2002, the Exchange filed with the Commission a proposed rule change to extend the market data revenue pilot program through August 30, 2002.<sup>11</sup> On July 2, 2002, the Commission summarily abrogated the PCX's proposed rule change and certain proposed rule changes of the National Association of Securities Dealers, Inc. and the Cincinnati Stock Exchange relating to market data revenue sharing.<sup>12</sup> Accordingly, after

<sup>9</sup> See Securities Exchange Act Release No. 46070 (June 12, 2002), 67 FR 42089 (June 20, 2002)(SR-PCX-2002-28).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> See SR-PCX-2002-37.

<sup>12</sup> See Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002)(File Nos. SR-PCX-2002-37, SR-NASD-2002-61, SR-NASD-

consultation with Commission staff, on July 9, 2002, the PCX filed with the Commission a proposed rule change to reinstate its market data revenue sharing program, and to reduce the level of the transaction credits paid to Users with respect to transactions in issues listed on the American Stock Exchange (*i.e.* "Tape B" securities).<sup>13</sup>

On August 7, 2002, the PCX established a market data revenue sharing program for certain transactions in Tape A securities.<sup>14</sup> With the instant proposed rule change, the Exchange proposes to amend that program by reducing the level of the transaction credits paid to Users with respect to transactions in such issues. Under the program, the Exchange will share a portion of its gross revenues derived from market data fees with (i) Any User that provides liquidity in a Tape A securities 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 in a Tape A security within the Directed Order Process;<sup>15</sup> and (iii) any User that represents all of one side and all or a portion of the other side of a Cross Order<sup>16</sup> execution in a Tape A security. Any User that meets these requirements will receive a 40% tape revenue credit per qualifying transaction that is reported over the Consolidated Tape Association's ("CTA") Tape A Network. The proposed tape revenue credit is intended to create additional incentives

2002-68, and SR-CSE-2002-06)(Order of Summary Abrogation).

<sup>13</sup> See Securities Exchange Act Release No. 46293 (August 1, 2002), 67 FR 51314 (August 7, 2002)(SR-PCX-2002-42).

<sup>14</sup> SR-PCX-2002-56.

<sup>15</sup> 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").

<sup>16</sup> 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).

to market participants to provide liquidity on the ArcaEx facility.<sup>17</sup>

#### 2. Statutory Basis

The Exchange believes the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>18</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>19</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and 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 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

Written comments on the proposed rule change were neither solicited nor received.

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

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission

<sup>17</sup> Although the PCX characterized the instant proposed rule change as "reinstating" its market data revenue sharing program for Tape A securities, the Commission notes that the PCX's Tape A market data revenue sharing program was not terminated by the PCX's decision to withdraw SR-PCX-2002-56 and simultaneously file the instant proposed rule change. See September 27, 2002 letter from Peter D. Bloom, Director, Policy Development, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division, Commission. As a result, the PCX agreed to re-characterize the instant filing as "amending" its market data revenue sharing program for Tape A securities. October 10, 2002 telephone conversation between Peter D. Bloom, Regulatory Policy, PCX, and Joseph Morra, Special Counsel, Division, Commission.

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>20</sup> and Rule 19b-4(f)(6) thereunder.<sup>21</sup> At any time within 60 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.

The Exchange asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes such waiver is consistent with the protection of investors and the public interest. The Commission notes that the PCX's market data revenue sharing program for Tape A securities is substantially similar to Nasdaq's program.<sup>22</sup> For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>23</sup>

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 number SR-PCX-2002-61 and should be submitted by November 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>24</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-46661; File No. SR-PCX-2002-63]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. To Amend Its Clearly Erroneous Policy**

October 15, 2002.

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 September 23, 2002, 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 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, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE" or "Corporation"), proposes to amend PCXE Rule 7.11(d) to confer authority on a PCXE officer designated by the Corporation who, in addition to the Chief Executive Officer and President, may nullify transactions or modify their terms arising out of any disruption or malfunction in the Archipelago Exchange ("ArcaEx") trading system, the equities trading facility of PCXE. Below is the text of the proposed rule change. Proposed new language is *italicized*. Proposed deletions are in [brackets].

\* \* \* \* \*

**PCX Equities, Inc.**

**Rule 7**

**Equities Trading; Clearly Erroneous Policy**

Rule 7.11(a)-(c)—No change.  
(d) System Disruption and Malfunctions. In the event of any

<sup>24</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.

disruption or a malfunction in the use or operation of any electronic communications and trading facilities of the Corporation, the Chief Executive Officer, [or the] President, *or such other officer designated by the Corporation* may declare a transaction arising out of the use or operation of such facilities during the period of such disruption or malfunction null and void or modify the terms of these transactions. Absent extraordinary circumstances, any such action of the Chief Executive Officer, [or] President *or designated Corporation officer* pursuant to this subsection (d) shall be taken within thirty (30) minutes of detection of the erroneous transaction. Each ETP Holder involved in the transaction shall be notified as soon as practicable, and the ETP Holder aggrieved by the action may appeal such action in accordance with the provisions of Rule 10.13.

\* \* \* \* \*

**Rule 10**

**Disciplinary Proceedings; Hearings and Review of Decisions by the Corporation**

Rule 10.13

(a) General Provisions. This Rule provides the procedure for persons aggrieved by any of the following actions taken by the Corporation to apply for an opportunity to be heard and to have the action reviewed. These actions are:

(1)-(3)—No change.

(4) The prohibition or limitation with respect to access to services provided by the Corporation, or the access to services of any ETP Holder taken pursuant to the Bylaws, or Rules or procedures of the Corporation; [or]

(5) *Actions taken by the Corporation pursuant to Rule 7.11;*

(6)[5]—No change.

(7)[6] Actions taken by the Corporation pursuant to Rule 7.23; *or*  
(8)[7]—No change.

(b)-(m)—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 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.

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(6).

<sup>22</sup> See Securities Exchange Act Release No. 46551 (September 25, 2002), 67 FR 61705 (October 1, 2002) (SR-NASD-2002-111) (amending NASD Rule 7010(c)(2)).

<sup>23</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).