

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PCX 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.

IV. Solicitation of Comments

On July 2, 2002, the Commission issued an Order abrogating certain proposed rule changes relating to market data revenue sharing programs.¹⁶ In that Order, the Commission expressed concern that the subject proposed rule changes raised “serious questions as to whether they are consistent with the Act and with the protection of investors.” Specifically, the Commission questioned the effect of market data rebates on the accuracy of market data, and on the regulatory functions of self-regulatory organizations.

The Commission now solicits comment on the instant proposed rule change, and in general, on (1) market data fees; (2) the collection of market data fees; (3) the distribution of market data rebates; (4) the effect of market data revenue sharing programs on the accuracy of market data; and (5) the impact of market data revenue sharing programs on the regulatory functions of self-regulatory organizations.

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 Exchange. All submissions should refer to file number SR-PCX-2002-62, and should be submitted by December 10, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46804; File No. SR-PCX-2002-65]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges

November 8, 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 September 27, 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 PCX filed Amendment No. 1, which replaces the original filing in its entirety, on November 7, 2002. 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 is proposing to amend its Schedule of Fees and Charges with respect to the following fees for options: broker-dealer and market maker transaction charges, the continued listings fee, and the shortfall fee. The text of the proposed rule change is below. New text is italicized; deleted text is in brackets.

SCHEDULE OF FEES AND CHARGES FOR EXCHANGE SERVICES

PCX Options: Trade-Related Charges	
Transactions:	
Customer	\$0.00 per contract side.
PCX Market Maker	\$0.21 per contract side.
Firm	\$0.10 per contract side for customer facilitation.
Broker/Dealer	[\$0.19] \$0.21 per contract side.
PCX Options: Floor and Market Maker Fees	
Continued Listings Fee	Difference between \$500 and average monthly revenue for issues with less than \$500 in volume based charges (average monthly revenue based on trailing 3 months). <i>The fee will be capped at \$15,000 per month per LLM firm.</i>
Shortfall Fee	\$.35 per contract on shortfall volume.*

• Only applies to the top 120 options. Shortfall volume is the difference between 12% of the total national

market share in an option issue for one month and the percentage executed by the LMM. *For the purpose of this*

calculation, the national market share of any equity option industry volume

¹⁶ Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002)(File Nos. SR-NASD-2002-61, SR-NASD-2002-68, SR-CSE-

2002-06, and SR-PCX-2002-37) (Order of Summary Abrogation).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 217 CFR 240.19b-4.

will be capped at 2.9 million contracts per day.

* * * * *

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 those statements.

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

The PCX is proposing to change its broker-dealer transaction charge, market maker transaction charges, continued listings fee, and shortfall fee effective with the October 2002 trading month.³ Other than the fees listed herein, the PCX does not seek to make any other changes to its fee schedule.

1. Broker-Dealer Transaction Charge

The PCX currently imposes a fee of \$0.19 per contract side on all transactions of broker-dealers. The PCX proposes to increase this fee to \$0.21 per contract side, which would bring the transaction fee to the same level as the PCX Market Maker transaction charge.

2. Continued Listing Fee

The PCX currently imposes upon LMMs a continued listing fee for issues that have not generated at least \$500 in monthly revenues to the PCX on a trailing three-month average basis.⁴ The continued listing fee is calculated as the incremental difference between the \$500 threshold and the amount of revenue that the issue generates. The PCX proposes to cap the amount of the continued listings fee that can be charged to an LMM firm at \$15,000 per month per LMM firm.

The PCX also proposes to modify the continued listing fee in order to adjust

³ In its original filing, which the PCX filed with the Commission on September 27, 2002, the PCX proposed to increase from \$0.21 to \$0.26 the transaction fee imposed on members for orders that originate from non-PCX options market makers. The PCX subsequently withdrew that particular proposed fee change when it filed Amendment No. 1 with the Commission on November 7, 2002.

⁴ See Securities Exchange Act Release No. 42050 (October 21, 1999), 64 FR 58117 (October 28, 1999) (SR-PCX-99-32)

the method of calculating the average monthly volume-based charges for recently transferred issues. Currently, LMM firms that are transferred issues from another LMM assume the continued listings fee from the transferring firm. To help foster demand for issues during a period of continuing consolidation among trading firms, the PCX proposes to modify the way the continued listings fee is applied to transferred issues. Under the PCX's proposal, an LMM would not be subject to the continued listings fee for an issue that it acquired by transfer for any portion of the month that it acquired the issue, assuming a mid-month transfer. The LLM firm would be subject to a fee based upon the activity of the first full month that it trades an issue. After the second full month of trading the issue, the transferee LMM would be subject to a continued listings fee based upon the trailing two-month activity level. In future months, the transferee LMM would be subject to the fee based on a three-month rolling average.

3. Shortfall Fee

In June 2002, the PCX increased the LMM shortfall fee from 10% to 12% for the top 120 equity options traded nationally. Due to periodic spikes in national industry volume, the PCX proposes to cap the shortfall fee when equity industry volume reaches 2.9 million contracts per day or higher. As proposed, LMM firms would not be charged a shortfall fee on contracts in a top 120 issue that exceeds the calculated volume cap amount.

The PCX believe that the proposal is consistent with section 6(b)(4) of the Act⁵ 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 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.

⁵ 15 U.S.C. 78f(b)(4).

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

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act⁶ and Rule 19b-4(f)⁷ because it changes the PCX fee schedule. At any time within 60 days after the filing of Amendment No. 1 to the 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 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 No. SR-PCX-2002-65 and should be submitted by December 10, 2002.

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

Margaret H. McFarland,

Deputy Secretary.

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SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3460]

State of Alabama

Henry County and the contiguous counties of Barbour, Dale and Houston in the State of Alabama; and Clay, Early

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f).

⁸ 17 CFR 200.30-3(a)(12).