

change, as amended, from interested persons.

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

The Exchange is proposing to adopt a rule disclaiming liability for The Options Clearing Corporation ("Clearing Corporation") with respect to the Options Intermarket Linkage ("Linkage").

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics*.

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Rule 1905. Limitation of Liability

The Clearing Corporation shall have no liability to Members with respect to the use, non-use or inability to use the Linkage, including without limitation the content of orders, trades, or other business facilitated through the Linkage, the truth or accuracy of the content of messages or other information transmitted through the Linkage, or otherwise.

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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 ISE 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 ISE 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 Exchange proposes to adopt a rule to limit the liability of the Clearing Corporation with respect to the Members' use of the Linkage. Pursuant to the Linkage Project and Facilities Management Agreement ("Agreement"),⁴ the parties to the Agreement who are Participants in the Intermarket Option Linkage Plan, including the ISE, are required to file a proposed rule change with the Commission providing the Clearing Corporation with limited liability with respect to Participant Members' use of

the Linkage within four months following the Linkage's effective date. Hence, the ISE proposes this rule change to fulfill its obligation under the Agreement.

2. Statutory Basis

The ISE believes that its proposal is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act⁶ in particular, in that it seeks to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, 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 ISE 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 ISE neither solicited nor received written comments concerning 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 ISE consents, the Commission will:

(A) By order approve such proposed rule change, as amended; or

(B) Institute proceedings to determine whether the proposed rule change, as amended, 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, 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 such filings will also be available for inspection and copying at the principal office of the ISE.

All submissions should refer to File No. SR-ISE-2003-15 and should be submitted by September 9, 2003.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48317; File No. SR-PCX-2003-40]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. to Amend its Schedule of Fees and Charges for the Archipelago Exchange Facility

August 12, 2003.

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 August 1, 2003, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange 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"), proposes to amend its fee schedule for services provided to ETP Holders³ and

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

⁴ Linkage Project and Facilities Management Agreement (January 30, 2003).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

Sponsored Participants⁴ that use the PCX's equities trading facility, the Archipelago Exchange ("ArcaEx"), by: (1) Reducing the per-share transaction fee for NYSE-listed securities to zero; (2) reducing the per-share User Transaction Credit for NYSE-listed securities to zero; and (3) eliminating the Tape A rebate for all transactions in NYSE-listed securities with the exception of Cross Orders.

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 proposal. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of the statements. The text of the proposed rule change is available at the PCX and at the Commission.

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

1. Purpose

The PCX, through its wholly owned subsidiary PCXE, proposes to reduce the per-share round lot transaction fee for NYSE-listed securities charged to ETP Holders and Sponsored Participants (collectively, "Users") that execute trades on ArcaEx. The PCX currently charges all Users in NYSE-listed securities a transaction fee of \$0.003 per share for orders executed in the ArcaEx limit order book. The PCX is proposing to reduce this transaction fee to zero but to leave unchanged its current odd-lot fee for NYSE-listed securities.⁵

According to the PCX, the rationale for this change is to make the pricing for executions on the ArcaEx in NYSE-listed securities more competitive. The PCX evaluated the costs and the other changes proposed in this filing and determined that it was feasible to lower the transaction fee for NYSE-listed securities traded on the ArcaEx facility.

The PCX also proposes to reduce the per-share User Transaction Credit for NYSE-listed securities to zero from \$.002 per share. With respect to the PCX's market data revenue credit for NYSE listed securities (or "Tape A

Securities"), the PCX proposes to eliminate the Tape A rebate for all transactions but Cross Orders.⁶ A Cross Order on the ArcaEx will continue to receive a 50% tape revenue credit per qualifying trade.

2. Basis

The PCX believes that the proposal is consistent with Section 6(b) of the Act,⁷ particularly Section 6(b)(4) of the Act,⁸ 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 inappropriate burden on competition.

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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)⁹ of the Act and Rule 19b-4(f)¹⁰ thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days after the filing of this 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 the 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-2003-40 and should be submitted by September 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48322; File No. SR-PCX-2003-20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendments No. 1 and 2 Thereto, by the Pacific Exchange, Inc. Relating to Limitation of Liability of the Options Intermarket Linkage

August 12, 2003.

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 April 28, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to 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 PCX. On August 4, 2003, the PCX submitted Amendment No. 1 to the proposed rule change.³ On August 7, 2003, the PCX submitted Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Tania J. Cho, Staff Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 1, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange submitted a new Form 19b-4, which replaced the original filing in its entirety. In Amendment No. 1, the PCX clarified in proposed PCX Rule 13.5(a) that Options Intermarket Linkage ("Linkage"), as used to send orders and other information to or from the Exchange, is a facility or service of the Exchange for the purpose of PCX Rule 13.2. In addition, the Exchange amended PCX Rule 13.2(b) to clarify that this Rule does not apply to Linkage.

⁴ See letter from Tania J. Cho, Staff Attorney, Regulatory Policy, PCX, to Deborah L. Flynn,

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 Odd-lot orders that are created as a result of a partial fill of a round lot would continue to be excluded from this fee.

⁶ A Cross Order is defined in PCXE Rule 7.31(s).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).