

under which a OneChicago member may be excluded from the Exchange's margin requirements as a "market maker," and therefore should raise no novel regulatory issues related to margin requirements. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>17</sup> to approve the proposed rule change prior to the thirtieth day after publication of the notice of filing thereof in the **Federal Register**.

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act<sup>18</sup>, that the proposed rule change (File No. SR-OC-2004-01) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50139; File No. SR-PCX-2004-62]

### 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 the Exchange's Schedule of Fees and Charges

August 3, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on July 7, 2004, the Pacific Exchange, Inc. ("PCX" 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 PCX. On July 28, 2004, PCX filed Amendment No. 1 to the proposed rule change.<sup>3</sup> 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

PCX proposes to amend its Schedule of Fees and Charges in order to adopt a fee that will apply to each OTP Holder that accesses the Exchange's server capacity to use the Actant quoting software employed in PCX Plus. The text of the proposed rule change is available at 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, 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. PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts 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 fee for those OTP Holders that wish to access the Exchange's server capacity to use the Actant quoting software employed in PCX Plus. Actant is a third-party vendor the Exchange has contracted with to provide quoting software to be employed in PCX Plus. PCX represents that, since it would be prohibitively expensive for small OTP Holders to purchase their own servers, the Exchange will create a server bank from which each OTP Holder could lease capacity. The Exchange believes that this will facilitate participation from smaller OTP Holders that might not have the expertise, capital, or staff to acquire and maintain the servers needed to support the quoting software. The Exchange states that it will charge the fee to each OTP Holder that accesses the Exchange's server capacity in order to use the Actant software.

###### 2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b)

Actant quoting software and made conforming changes to the description and purpose sections of the proposal. Amendment No. 1 supercedes and replaces the proposed rule change in its entirety.

of the Act,<sup>4</sup> in general, and furthers the objectives of section 6(b)(4) of the Act,<sup>5</sup> in particular, in that the proposed rule change 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 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 with respect to the proposed rule change.

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

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>6</sup> and subparagraph (f)(2) of Rule 19b-4<sup>7</sup> thereunder, because the proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange.

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.<sup>8</sup>

#### 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. Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

<sup>8</sup> For purposes of calculating the 60-day abrogation period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C), the Commission considers that period to commence on July 28, 2004, the date PCX filed Amendment No. 1 to the proposed rule change.

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</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 letter from Steven B. Matlin, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 27, 2004 ("Amendment No. 1"). In Amendment No. 1, PCX clarified that Actant is a third-party vendor the Exchange has contracted with to provide quoting software to be employed in PCX Plus. PCX also amended the rule text to clarify that the proposed fee will apply to each OTP Holder that accesses the Exchange's server capacity to use the

Number SR-PCX-2004-62 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-PCX-2004-62. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions

should refer to File Number SR-PCX-2004-62 and should be submitted on or before August 30, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Jill M. Peterson,**  
*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-50131; File No. SR-PCX-2004-29]

**Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 to Add a Provision in the Minor Rule Plan and Recommended Fine Schedule for Failure to Maintain Continuous, Two-Sided Q Orders in Those Securities in Which the Market Maker is Registered to Trade**

July 30, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 14, 2004, 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 July 2, 2004, the PCX amended the

proposed rule change.<sup>3</sup> On July 26, 2004, the PCX again amended the proposed rule change.<sup>4</sup> 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 Exchange proposes to amend the PCXE Minor Rule Plan ("MRP") and Recommended Fine Schedule ("RFS") to add a provision in the MRP and RFS for failure to maintain continuous, two-sided Q Orders in those securities in which a PCXE market maker is registered to trade. The text of the proposed rule change is below. Proposed new language is in italics.

**Rule 10—Disciplinary Proceedings, Other Hearings, and Appeals**

\* \* \* \* \*

Minor Rule Plan

Rule 10.12(a)-(f)—No change.  
(g) Minor Rule Plan: Minor Trading Rule Violations.

(1)-(2)—No change.

(3) *Failure to maintain continuous, two-sided Q Orders in those securities in which the Market Maker is registered to trade (Rule 7.23(a)(1)).*

\* \* \* \* \*

<sup>1</sup> Fines for multiple violations of Minor Trading Rules are calculated on a running two-year basis, except that violations denoted with an asterisk are calculated on a running one-year basis.

\* \* \* \* \*

(i) Minor Rule Plan: Recommended Fine Schedule.

	1st violation	2nd violation	3rd violation
(1)-(2)—No change..			
(3) <i>Failure to maintain continuous two-sided Q Orders in those securities in which the Market Maker is registered to trade. (Rule 7.23(a)(1))</i> <sup>2</sup> .....	\$100.00	\$250.00	\$500.00

<sup>2</sup> This schedule is based on the number of violations for a particular security and the number of violations shall be calculated on a monthly basis and is intended to apply to inadvertent violations of Rule 7.23(a)(1). In cases of deliberate or other aggravated circumstances, other disciplinary action may be sought.

**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 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 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 Exchange is proposing to amend the PCXE MRP and RFS to add a

<sup>9</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 letter from Tania J.C. Blanford, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director,

Division of Market Regulation, Commission, dated July 1, 2004 ("Amendment No. 1"). Amendment No. 1 completely replaced and superseded the original filing.

<sup>4</sup> See letter from Tania J.C. Blanford, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director,

Division of Market Regulation, Commission, dated July 23, 2004 ("Amendment No. 2"). Amendment No. 2 replaced footnote #2 (on page 3 of Amendment No. 1) and footnote #4 (on page 8 of Amendment No. 1).