

of a particular security on which to base a mark-up or mark-down. The Mark-Up Policy also currently allows for differences in mark-ups and mark-downs based on considerations such as the complexity of the security.

One commenter (No. 8) supported the methodology contained in the proposed rule change, but noted that a degree of subjectivity will of necessity accompany the use of the factors. Similarly, one commenter (No. 6) stated that the process of evaluating the degree of similarity between and among securities is clearly more subjective and qualitative than reference to actual prices or quotations in the same security, and subsequently, much will depend on the analytical approach utilized by members, customers and regulatory officials to determine which securities are similar. This commenter, therefore, suggested that a continuing effort may be required to refine the NASD's regulatory approach to determining and quantifying degrees of similarity among debt securities. NASD Regulation acknowledges that the Debt Mark-Up Interpretation, in providing guidance, does not answer all questions that will arise but presently does not believe that more objective standards are feasible. NASD Regulation would wish to consider any comments relating to this issue.

One commenter (No. 1) noted that the proposal contained the two terms, "sophisticated institutional investors" and "institutional accounts," which appeared duplicative. In response, NASD Regulation replaced the term "sophisticated institutional investors" with the term "institutional accounts."

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

Within 90 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,¹⁶ the Commission will:

(A) by order approve such proposed rule change, or

¹⁶ The NASD will file Amendment No. 3 consenting to a period of 90 days, beginning from the date of publication of notice of filing of the proposed rule change SR-NASD-97-61 in the **Federal Register**, for the Commission to act as provided in Section 19(b)(2). Telephone conversation between Sharon Zackula, Assistant General Counsel, NASD Regulation, and Karl Varner, Attorney, SEC (Sept. 30, 1998).

(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, N.W., Washington, DC 20549. 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 NASD. All submissions should refer to the File No. SR-NASD-97-61 and should be submitted by December 7, 1998.

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. 34-40496; File No. SR-PCX-98-42]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Equity Rate Reduction and Simplification

September 29, 1998.

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 8, 1998, 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 PCX. 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

PCX proposes to change its Schedule of Fees and Charges for Exchange Services for equity trade-related transaction charges. The text of the proposed rule change is contained in Exhibit A.

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 aspects of such statements.

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

1. Purpose

Currently, under the Schedule of Fees and Charges for Exchange Services, members are subject to equity trade-related charges based on cumulative billable trade value per month. The value charges are incremental and resulting charges are subject to discounts for automated trades. The Exchange proposes to reduce transaction charges and simplify the way volume based charges are calculated. Specifically, the Exchange proposes to eliminate listed comparison charges, reduce transaction fees and establish a share-based structure with four tiers (as opposed to the current value-based structure with seven tiers and twelve discount categories). The Exchange also proposes to cap block transactions at 20,000 shares, and to continue to waive transaction and off-board comparison charges in AMEX-listed issues.

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) ³ of the Act, in general, and furthers the objectives of Section 6(b)(4) ⁴ in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

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

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii) ⁵ and subparagraph (e)(2) of Rule 19b-4 thereunder.⁶ At any time within 60 days of the filing of 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.⁷

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, N.W., Washington, D.C. 20549. 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 also will be available for inspection and copying at the principal office of the PCX.

All submissions should refer to File No. SR-PCX-98-42 and should be submitted by October 29, 1998.

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

Margaret H. McFarland,

Deputy Secretary.

EXHIBIT A—Text of the Proposed Rule Change ⁹

SCHEDULE OF FEES AND CHARGES FOR EXCHANGE SERVICES

* * * * *

PCX EQUITIES: TRADE-RELATED CHARGES

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EXCHANGE TRANSACTIONS

Cumulative Billable Shares Per Month

First 4 million shares: \$0.31 per 100 shares

Next 10 million shares: \$0.17 per 100 shares

Next 8 million shares: \$0.09 per 100 shares

Over 22 million shares: \$0.05 per 100 shares

All trades capped at 20,000 shares.

[EXCHANGE TRANSACTIONS]

| Cumulative billable trade value per month | Charge per \$1,000 of trade value* |
|---|------------------------------------|
| \$0 to \$50,000,000 | \$0.13 |
| 50,000,001 to | 0.10 |
| 150,000,001 to | 0.08 |
| 350,000,001 to | 0.06 |
| 500,000,001 to | 0.04 |
| 650,000,001 to | 0.02 |
| Over 800,000,000 | 0.01 |

*Value charges are incremental; i.e., first \$50,000,000 of monthly business is charged \$0.13 rate, next \$100,000,000 is charged \$0.10 rate, etc. Resulting charges are then subject to discounts shown below for any automated trades.

DISCOUNT AND CAPS

Automated Trade Discounts

The following discounts from the above transaction charges apply to automated trades:

| Trade size (shares) | Under \$150 million of trade value | \$150 to \$350 million of trade value | \$350 to \$500 million of trade value |
|---------------------|------------------------------------|---------------------------------------|---------------------------------------|
| 100 to | 35% | 30% | 25% |
| 401 to | 25 | 20 | 15 |
| 601 to | 20 | 15 | 5 |
| 801 to | 10 | 5 | 2.5 |

Block Trades

Transaction charges for block trades of 5,000 shares or more are subject to a minimum charge of \$15 per trade side and a maximum charge of \$75 per trade side.

Cap on Transaction Charges

Aggregate monthly transaction charges are subject to a cap of \$0.45 per 100 shares]

OFFBOARD TRADE RECORDING AND COMPARISON

\$0.05 per 100 shares for each side of individual stock, warrant, or rights for [listed or] offboard trades submitted for comparison (comparison charges are capped at 20,000 shares per trade side; minimum of \$0.05, maximum of \$10).

\$0.03 per \$1,000 bond face value for each side of individual bond trade submitted for

comparison (minimum of \$0.03, maximum of \$3).

AMEX-LISTED ISSUES

Trades in AMEX-Listed equity issues are not subject to transaction or comparison charges.

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³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(4).

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4(e)(2).

⁷ In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).