

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 NYSE. All submissions should refer to File No. SR-NYSE-00-27 and should be submitted by August 8, 2000.

#### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds, for the reasons set forth below, that the NYSE's proposal is consistent with the requirements of the Act and the rules and regulations thereunder.<sup>7</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act.<sup>8</sup> Section 6(b)(5) of the Act requires that the rules of the exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

The Commission believes that the proposal is consistent with the Act because the NYSE's alternative financial listing standards with \$1 billion in market capitalization and \$100 million in revenues, reduced from \$250 million, in the most recent fiscal year, should still allow the Exchange to list companies that the Exchange believes will prove to be financially successful in the future, although recently they may not have been as profitable. The Commission believes that the reduction in the continued listing standard from \$50 million in revenues in the last fiscal year to \$20 million is not inconsistent with the Act for the same reason. The Commission also believes that, by providing issuers another alternative forum for their securities in the U.S. marketplace, the proposed rule change is consistent with the requirements of the Act to remove impediments to and perfect the mechanism of a free and open market.

In addition, the Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of notice in the **Federal Register**. The Exchange represents that certain issuers are eager to list on the Exchange under the proposed standards. To ensure that such issuers are permitted to list on the

Exchange in a timely basis, the Commission approves the proposed rule change, as amended, on an accelerated basis, pursuant to Sections 6(b)(5) and 19(b)(2) of the Act.<sup>9</sup>

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change and Amendment No. 1 (SR-NYSE-00-27) are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43020; File No. SR-PCX-00-14]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc., Modifying PCX Transaction and On-Line Comparison Fees and Establishing a Credit for Book Executions

July 10, 2000.

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 April 27, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") 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 proposes to modify its transaction and on-line comparison fees and establish a credit for book executions. The Exchange also proposes to clarify its treatment of the portion of the market maker transaction charge that is collected for Options Industry Conference ("OIC") activities.

#### 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 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 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, the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to reduce the transaction fee for customer trades that are executed manually and to eliminate the fee for customer trades that are executed electronically. The Exchange is also proposing to eliminate the on-line comparison charge for customer trades and to establish a credit for book executions. Moreover, the Exchange is proposing to raise the market maker transaction fee and implement a floor brokerage charge. Finally, the Exchange also proposes to clarify its treatment of the portion of the current market maker transaction charge (\$0.01 per contract) collected for OIC activities.

Currently, the PCX Schedule of Rates and Charges provides for a customer transaction charge of \$0.12 per contract side for all transactions except Pacific Options Exchange Trading System ("POETS") automated executions, and a market maker transaction charge of \$0.185 per contract side. In addition, the PCX charges an on-line comparison charge of \$0.05 per contract for customers, firms, and market makers.

The Exchange proposes to reduce customer transaction fees from \$0.12 to \$0.09 per contract side for manual (non-hand held) executions and to eliminate customer transaction charges for all other forms of electronic executions including book executions, cabinet trades, automated opening rotation and broker hand-held executions. The PCX also proposes to establish a \$0.10 per contract credit for customer book executions.<sup>3</sup> The Exchange further

<sup>9</sup> See 15 U.S.C. 78f(b)(5); 15 U.S.C. 78s(b)(2).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</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>7</sup> The Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>3</sup> Customers will receive a \$0.10 credit per book execution that will be applied to each customer's total monthly Exchange fees. Customers will not receive a cash payment for unused portions of the credit and any unused portion will not carry forward to the next billing month. The credit will

proposes to eliminate the on-line comparison charge of \$0.05 per contract for customer executions.<sup>4</sup> The Exchange will continue to charge \$0.05 per contract for firm and market maker executions. The Exchange believes that these proposed changes will attract order flow to the Exchange and enable it to remain competitive.

The Exchange also proposes to increase the market maker transaction fee from \$0.185 to \$0.235 per contract side and to implement a floor brokerage fee of \$0.01 per contract, charged to the executing floor broker member. The Exchange believes that the proposed fees will (1) help offset the proposed reduction of customer transaction fees and the elimination of customer online comparison charges, and (2) cover the operational charges associated with running the PCX options floor.

Finally, the Exchange proposes to clarify that the PCX does not pay to the OIC each \$0.01 charged to PCX market makers. On August 26, 1992, the Commission approved an Exchange proposal to increase certain market maker transaction charges by \$0.01 in order to fund an OIC industry-wide options education and media program.<sup>5</sup> Since 1992, the Exchange has continued to fund the program by reimbursing the OIC for the PCX's share of OIC expenses. These expenses are billed to the PCX on a regular basis, as the OIC incurs them.

The Exchange notes that it does not pay to the OIC each \$0.01 per contract side charged to each PCX market maker. In recent years, the amount charged has exceeded the amount paid for OIC expenses by 16% to 37%.<sup>6</sup> The Exchange represents that if it pays less into the OIC program than it has collected (on an aggregate \$0.01 per contract basis), then it will treat that excess amount as ordinary revenue. Conversely, if the PCX pays the OIC more than has been collected (on an aggregate \$0.01 basis), the Exchange will treat the amount that is over and above

what it has collected as an ordinary business expense.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>8</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

### 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 Exchange did not solicit or receive comments on the proposed rule change.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>9</sup> and Rule 19b-4(f)(2) thereunder,<sup>10</sup> in that it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such 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 furtherance of the purposes of the Act.<sup>11</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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. 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 the File No. SR-PCX-00-14 and should be submitted by August 8, 2000.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.<sup>12</sup>

Margaret H. McFarland,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43025; File No. SR-PCX-99-40]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change Relating to Order Book Officials

July 12, 2000.

## I. Introduction

On October 8, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), 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> a proposed rule change to modify its rules pertaining to the Exchange's order book officials ("OBOs"). The proposed rule change was published for comment in the **Federal Register** on November 4, 1999.<sup>3</sup> The Commission received on comments on the proposal. On May 25, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>4</sup> This order approves the proposal, as amended.

<sup>12</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> Exchange Act Release No. 42068 (October 28, 1999), 64 FR 60259.

<sup>4</sup> Letter from Robert P. Pacileo, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Senior Special Counsel, Division of Market Regulation,

Continued

not apply to customer orders in the limit order book that were executed as part of an opening rotation.

<sup>4</sup> The Exchange charges the on-line comparison charge for matching buyers and sellers. This charge will not apply to customers orders executed manually or electronically. Telephone conversation between Michael Pierson, Vice President, Regulatory Policy, PCX, Sonia Patton, Attorney, Division of Market Regulation ("Division"), Commission, and Susie Cho, Attorney, Division, Commission, June 13, 2000.

<sup>5</sup> See Securities Exchange Act Release No. 31098 (Aug. 26, 1992), 57 FR 40238 (Sept. 2, 1992).

<sup>6</sup> The Exchange increased the charge for manual transactions of market makers in equity options from \$0.085 to \$0.095 and in index options from \$0.10 to \$0.11. See Securities Exchange Act Release No. 31098 (Aug. 26, 1992), 57 FR 40238 (Sept. 2, 1992).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78c(b)(3)(A)(ii).

<sup>10</sup> 17 CFT 240.19b-4(f)(2).

<sup>11</sup> In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).