

eliminates the effectiveness of redacting the NAC decision; not linking the two decisions, however, obscures the subsequent history of the Hearing Panel decision. To eliminate the anomalous practice of initially releasing information about the same disciplinary matter first in unredacted form and then in redacted form, the proposed rule change would require the NASD to release NAC decisions that do not meet the publication criteria in unredacted form if the underlying Hearing Panel decision meets the criteria for release of information under IM-8210-2 and has been published in unredacted form. This proposed rule change would permit public investors and other interested persons who have read an unredacted Hearing Panel decision to follow the history of a disciplinary matter without having to read a NAC decision that redacts information previously released to the public.

Proposed IM-8310-2(d)(1)(B) would address the situation in which sanctions imposed on one or more, but not all, of the respondents in Hearing Panel or NAC decisions meet the criteria for release of information to the public. The proposed rule change would clarify that, in such situations, the NASD will release information with respect to both Hearing Panel and NAC decisions in unredacted form as to the respondents who meet the publication criteria and in redacted form as to the respondents who do not meet the publication criteria.

In some cases, a subsequent NAC decision may modify the sanctions imposed by the Hearing Panel so that particular respondent(s) in the Hearing Panel decision no longer meet the criteria for release of information to the public. Consistent with proposed IM-8310-2(d)(1)(A) as discussed above, information regarding respondents in NAC decisions that do not meet the criteria for release of information to the public will be released in unredacted form if the sanctions imposed on the respondent in the underlying Hearing Panel decision meet one or more of such criteria and the Hearing Panel decision as to that respondent was published in unredacted form.

## 2. Statutory Basis

The NASD believes that the proposal is consistent with the provisions of section 15A(b)(6) of the Act,<sup>8</sup> which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The

NASD believes that the proposed rule change is designed to accomplish these ends by clarifying that the NASD will release information to the public with respect to Rule 9200 Series disciplinary decisions upon the issuance of such decisions and clarifying the circumstances under which the NASD will redact information with respect to all Rule 9000 Series disciplinary decisions.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

### *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.

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

Because the foregoing proposed rule change does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> 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.

## 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 NASD. All submissions should refer to file number SR-NASD-2002-103 and should be submitted by August 28, 2002.

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. 34-46294; File No. SR-PCX-2002-46]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Size of Option Orders Eligible for Facilitation Crossing

August 1, 2002.

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 July 25, 2002, 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 the PCX. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6). PCX provided the Commission with notice of its intention to file this proposal on July 16, 2002.

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

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

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

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

PCX proposes to amend its rules by reducing the minimum number of contracts necessary for member firms to effect facilitation crossing transactions on the Trading Floor pursuant to PCX Rule 6.47(b). Specifically, the Exchange proposes to reduce the minimum contract size parameter under PCX Rule 6.47(b) from 200 contracts to 50 contracts. The text of the proposed rule change is below. New proposed language is italicized; deleted language is in brackets.

\* \* \* \* \*

### 4987 "Crossing" Orders and Stock/Option Orders

Rule 6.47(a)—No change.

(b) *Crossing of Facilitation Orders.* A Floor Broker who holds an order for a public customer or a broker-dealer ("customer order") and an order for the proprietary account of a member organization that is representing that customer (the "facilitation order") may cross those orders only if the following procedures and requirements are followed.

(1) The size of the customer order subject to facilitation must be at least *fifty* [two hundred (200)] contracts. Orders for less than *fifty* [200] contracts may be facilitated pursuant to this rule but are not subject to subsection (4) below pertaining to firm guarantees.

(2)–(6)—No change.

(c)–(f)—No change.

\* \* \* \* \*

## 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 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 such statements.

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

#### 1. Purpose

Under current PCX Rule 6.47(b), a Floor Broker who holds an order for a public customer or broker-dealer ("customer order") and an order for the proprietary account of a member

organization that is representing that customer or broker-dealer ("firm order") may cross those orders, but only if certain procedures and requirements set forth in PCX Rule 6.47(b) are followed. If the transaction occurs at a price between the trading crowd's quoted market, then up to 40% of the customer order may be crossed with the firm order.<sup>5</sup> If the transaction occurs at a price that is equal to the trading crowd's quoted market, then up to 25% of the customer order may be crossed with the firm order.<sup>6</sup> In addition, current PCX Rule 6.47(b)(1) establishes a minimum order size parameter for facilitation crossing transactions. Specifically, it states that the size of a customer order subject to facilitation must be at least two hundred (200) contracts. It further states that orders for less than 200 contracts may be facilitated pursuant to PCX Rule 6.47(b), but such orders would not be subject to subsection (4) pertaining to firm guarantees. The Exchange is proposing to amend PCX Rule 6.47(b)(1) by replacing two references to "200 contracts" with references to "50 contracts."

The purpose of the proposal is to assure that member firms may receive guaranteed contracts to be eligible for participation on customer orders for 50 contracts or more. In that regard, the Exchange notes that the facilitation crossing rules of other options exchanges currently permit orders for at least 50 contracts for a guarantee whereby the firm entering the order may participate in the trade to a certain extent not to exceed 40%.<sup>7</sup>

#### 2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>9</sup> in particular, because it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest.

### 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.

<sup>5</sup> See PCX Rule 6.47(b)(4)(A).

<sup>6</sup> See PCX Rule 6.47(b)(4)(B).

<sup>7</sup> See Rule 950(d), Commentary .02(d) of the American Stock Exchange; Rule 6.74(d) of the Chicago Board Options Exchange; and Rule 716(d) of the International Securities Exchange.

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

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

### 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 proposed rule change:

(1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days from the date of filing. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date. The proposed rule change has therefore become effective pursuant to section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

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 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 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, 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.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

SR-PCX-2002-46 and should be submitted by August 28, 2002.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46293; File No. SR-PCX-2002-42]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Adopt a Tape Revenue Sharing Program for Certain Transactions on the Exchange in Tape B Securities

August 1, 2002.

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 July 10, 2002, 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. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. 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 fee schedule for services provided to ETP Holders and Sponsored Participants<sup>4</sup> on the Archipelago Exchange, the equities trading facility of PCXE. The text of the proposed rule change is below. Proposed additions are in *italics*.

#### SCHEDULE OF FEES AND CHARGES FOR EXCHANGE SERVICES

*	*	*	*	*	*	*	*	*	*
Archipelago Exchange:	Other Fees and								
Charges									
Market Data Revenue Sharing Credit									
Liquidity Provider Credit .....									
Directed Order .....									
Cross Order .....									
*	*	*	*	*	*	*	*	*	*

*50% tape revenue credit per qualifying trade (applicable to limit orders that are residing in the Book and that execute against inbound marketable orders in Tape B securities).*

*50% tape revenue credit per qualifying trade (applicable to any market maker that executes against a Directed Order in a Tape B security within the Directed Order Process, as defined in PCXE Rule 7.37(a)).*

*50% tape revenue credit per qualifying trade (applicable to any Cross Order, as defined in PCXE Rule 7.31(s), where the ETP Holder or Sponsored Participant represents all of one side of the transaction and all or a portion of the other side in a Tape B security).*

#### 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 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 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

The Exchange proposes to amend its fees charged to ETP Holders and Sponsored Participants (collectively "Users") that access the Archipelago Exchange ("ArcaEx") trading facility by adopting a mechanism for sharing with Users market data revenue derived from transactions in Tape B securities.<sup>5</sup>

The Exchange proposes to share a portion of its gross revenues derived

from market data fees (*i.e.*, tape revenue) with (i) any User that provides liquidity in a Tape B security by entering a resting limit order into the ArcaEx Book that is then executed against an incoming marketable order within the Display Order, Working Order, or Tracking Order processes; (ii) any Market Maker that executes against a Directed Order in a Tape B security within the Directed Order Process;<sup>6</sup> and (iii) any User that represents all of one side and all or a portion of the other side of a Cross Order<sup>7</sup> execution in a Tape B security (individually, "Qualifying Transaction" and

which is a market or limit order to buy or sell that has been directed to the particular market maker by the User. See PCXE Rule 7.37(a) (description of "Directed Order Process").

<sup>7</sup> A Cross Order is defined as a two-sided order with instructions to match the identified buy-side with the identified sell-side at a specified price (the cross price), subject to price improvement requirements. See PCXE Rule 7.31(s).

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

<sup>4</sup> 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).

<sup>5</sup> Tape B securities include: (a) securities that are listed for trading on the American Stock Exchange; and (b) certain other securities that are deemed to be eligible for such listing.

<sup>6</sup> The Directed Order Process is the first step in the ArcaEx execution algorithm. Through this Process, Users may direct an order to a Market Maker with whom they have a relationship and the Market Maker may execute the order. To access this process, the User must submit a Directed Order,