

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has 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

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 Exchange consents, the Commission will:

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

(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, 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 Exchange. All submissions should refer to File No. SR-AMEX-2001-106 and should be submitted by February 27, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45366; File No. SR-Amex-2002-06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Implementation of a Fee for the Issuance of Temporary Identification Badges

January 30, 2002.

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 January 24, 2002, the American Stock Exchange LLC ("Amex" 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 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 Amex, pursuant to Rule 19b-4 of the Act, proposes to charge a flat fee of \$50 per occasion for the issuance of temporary identification badges for any member or member firm employee who fails to bring his or her badge to the Exchange. According to the Exchange, members and/or their firms will be automatically billed monthly for each temporary identification badge for both affiliated employees and members.

The text of the proposed rule change is available at the Office of the Secretary, the Amex, 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, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

1. Purpose

The Amex represents that current circumstances require heightened security measures, and thus, that the Amex's Security Department's resources need to be focused on these measures. According to the Amex, issuing temporary identification badges interferes with more important duties and is an expense to the Exchange. As a result, the Amex is proposing to charge a flat fee of \$50 per occasion for the issuance of temporary identification badges for any member or member firm employee who fails to bring his or her badge to the Exchange. Members and/or their firms will be automatically billed monthly for each temporary identification badge for both affiliated employees and members.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)³ of the Act, in general, and Section 6(b)(4) of the Act,⁴ in particular, because 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 Exchange does not believe that the proposed rule change will impose any burden on competition.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)⁵ of the Act and subparagraph (f)(2) of Rule 19b-4⁶ thereunder. 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

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(4).

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

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 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 Amex. All submissions should refer to File No. SR-Amex-2002-06 and should be submitted by February 27, 2002.

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. 34-45351; File No. SR-PCX-2001-51]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc., Relating to Schedule of Fees and Charges for Options Market Share Shortfall Fee, Surcharge Fee, and Options Issue Transfer Fee

January 29, 2002.

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 December 26, 2001, 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 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 PCX proposes to modify its Schedule of Fees and Charges to reflect a new options market share shortfall fee, surcharge fee, and options issue transfer fee.

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

Option Market Share Shortfall Fee

The Exchange is proposing to adopt a new Lead Market Maker ("LMM") shortfall fee, of \$.35 per contract, to be paid by the LMM allocated any "Top 120 Option" if at least 10 percent of the total national monthly contract volume ("total volume") for such Top 120 Option is not achieved on the PCX in that month.³ A "Top 120 Option" is defined by the proposal as one of the 120 most actively traded equity options in terms of the total number of contracts traded nationally for a specified month based on volume reflected by the Options Clearing Corporation ("OCC").⁴

The PCX states that at the end of each trading month, the total number of contracts executed on the PCX (the "PCX volume") in a particular Top 120 Option will be subtracted from the amount that represents 10 percent of the

total national volume for that option ("10% total volume") to determine the number of contracts that represent the "shortfall" for that Top 120 Option for purposes of calculating this fee.

Specifically, the PCX will apply the following calculation: 10% total volume minus PCX volume equals the shortfall volume. If the shortfall volume is a number of contracts greater than zero, the shortfall volume will be multiplied by \$.35 per contract to determine the LMM shortfall fee for that month for that Top 120 Option.⁵

In sum, if the PCX fails to garner 10 percent of the total volume for a particular month for a Top 120 Option, the LMM for that Top 120 Option would be required to pay the Exchange the LMM shortfall fee for each contract that falls below 10 percent up to the amount that would represent 10 percent of the total volume for that option.⁶

The total volume for purposes of the 10 percent threshold is based on the current month's volume.⁷ However, the determination of whether an equity option is considered a Top 120 Option for purposes of the fee is based on a different time period. The Top 120 Options for January will be based on November's volume. Thereafter, the Exchange will continue the two-month differentiation, so that February's Top 120 Options will be based on December's volume, and March's Top 120 Options will be based on January's volume, and so forth.

The purpose of the proposed rule change is to amend PCX's schedule of dues, fees and charges to impose a fee for any deficiency between what the PCX actually traded and 10 percent of the total volume for each respective month. PCX intends the proposed fee to provide the PCX with the approximate revenue it would have received had a Top 120 Option traded at least 10 percent of the total volume in a given month on the PCX. The PCX represents that the options LMM shortfall fee

⁵ If the result of the first equation (10% total volume minus PCX volume) was negative, meaning the PCX volume exceeded 10% total volume for a Top 120 Option, then there would be no shortfall to which the LMM shortfall fee would apply. Under the proposal, any excess volume (over the 10% total volume target) could not be carried over to another month, nor could any excess volume in one option be assigned to another option. Telephone conversation between Cindy Sink, Senior Attorney, Regulatory Policy, PCX, and Ira Brandriss, Special Counsel, and John Riedel, Attorney-Advisor, Division of Market Regulation ("Division"), Commission, January 15, 2002 ("Telephone conversation with the PCX").

⁶ Telephone conversation with the PCX.

⁷ For example, for the month of December, the LMM shortfall fee would apply to 10 percent of total December volume minus the PCX December volume.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The shortfall fee is similar to the Philadelphia Stock Exchange's shortfall fee. See Securities Exchange Act Release No. 43201 (August 23, 2000), 65 FR 52465 (August 29, 2000).

⁴ The PCX intends to divide by two the total volume amount reported by OCC, which reflects both sides of an executed transaction, thus avoiding one trade being counted twice for purposes of determining overall volume.