

(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 change, as amended, 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-NYSE-2003-42. 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, comments should be sent in hard copy or by e-mail but not by both methods. 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. 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-NYSE-2003-42 and should be submitted by April 8, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49397; File No. SR-PCX-2004-10]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Implementing a New Fee To Recover Costs Associated With a Royalty Fee for Trading Options on an Exchange-Traded Fund

March 11, 2004.

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 February 18, 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 the Exchange. The PCX has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the PCX 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 is proposing to amend the Trade-Related Charges portion of its Schedule of Fees and Charges ("Schedule") in order to implement a new fee to recover costs associated with a royalty fee. The text of the proposed change to the fee schedule is available at the Exchange 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 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.

<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).

#### 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 Trade-Related Charges portion of its Schedule in order to implement a new fee to recover costs associated with a royalty fee for trading options on an Exchange-Traded Fund ("ETF"). In December 2003, the Exchange began trading options on the NASDAQ Fidelity Composite Index ("ONEQ"), an ETF. In order to recover the costs for the associated royalty fee, the Exchange is proposing to assess a \$0.12 fee per contract side to all Market Makers, Firms and Broker/Dealers. The Exchange represents that the customer side of an ONEQ transaction will not be assessed any fee. The Exchange believes that assessing this fee will provide adequate cost recovery for the royalty fee that the Exchange incurs for listing the ETF.

##### 2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,<sup>4</sup> in general, and section 6(b)(4) of the Act,<sup>5</sup> in particular, in that it 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 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 it 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

<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> 17 CFR 200.30-3(a)(12).

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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-PCX-2004-10. 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, comments should be sent in hardcopy or by e-mail but not by both methods. 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. SR-PCX-2004-10 and should be submitted by April 8, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49410; File No. SR-PCX-2004-14]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Time for Entering Orders Eligible for the Closing Auction

March 12, 2004.

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 March 3, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the PCX. The PCX filed the proposal pursuant to Section 19(b)(3)(A) under 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.<sup>5</sup> 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 amend paragraph (d)(2)(B) of PCXE Rule 7.34, "Trading Sessions," to permit Users to enter Market-on-Close Orders ("MOC Orders"),<sup>6</sup> Limit-on-Close Orders ("LOC Orders"),<sup>7</sup> and Limited Price Orders beginning at 6:30 a.m. (Pacific Time) rather than 4:30 a.m. (Pacific Time). The text of the proposed rule change appears below. Deletions are in brackets; additions are *italicized*.

#### Trading Sessions

- Rule 7.34(a)-(c)—No change.  
 (d)Orders Permitted in Each Session.  
 (1)—No change.  
 (A)-(H)—No change.  
 (2) During the Core Trading Session:  
 (A)—No change.

<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).

<sup>5</sup> The PCX has asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii).

<sup>6</sup> PCXE Rule 7.31(dd) defines a Market-on-Close Order as a "Market Order that is to be executed only during the Closing Auction."

<sup>7</sup> PCXE Rule 7.31(ee) defines a Limit-on-Close Order as a "Limited Price Order that is to be executed only during the Closing Auction."

(B) Users may enter Market-on-Close Orders, Limit-on-Close Orders, and Limited Price Orders beginning at [4]6:30 am (Pacific Time) and concluding at 1:00 pm (Pacific Time) for inclusion in the Closing Auction, except as provided in Rule 7.35(e)(2). Market-on-Close Orders and Limit-on-Close Orders are eligible for execution only during the Closing Auction. Market Orders are not eligible for execution in the Closing Auction.

(C)—No change.

(3)—No change.

(e)-(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

The PCX, through its wholly-owned subsidiary PCXE, proposes to amend its rules governing the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE, to modify the time for entering Closing Auction-eligible orders. The PCX notes that the Commission recently approved a PCX proposal that established a beginning time of 4:30 a.m. (Pacific Time) for entering MOC Orders, LOC Orders, and Limited Price Orders for inclusion in ArcaEx's Closing Auction.<sup>8</sup> As part of its efforts to enhance ease of participation on ArcaEx, the PCX seeks to delay the beginning time for entering such orders from 4:30 a.m. (Pacific Time) to 6:30 a.m. (Pacific Time).

According to the PCX, the Core Trading Session begins at 6:30 a.m. (Pacific Time). The PCX believes that Users may be confused by the current rule because an order could be eligible for the Closing Auction at a time when the PCX is still accepting orders eligible for the Opening Auction.<sup>9</sup> The PCX

<sup>8</sup> See Securities Exchange Act Release No. 48883 (December 4, 2003), 68 FR 69748 (December 15, 2003) (order approving File No. SR-PCX-2003-24).

<sup>9</sup> The PCX accepts orders eligible for the Opening Auction from 5 a.m. (Pacific Time) until 6:30 a.m.

Continued

<sup>8</sup> 17 CFR 200.30-3(a)(12).