

if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent either 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at <http://www.optionsclearing.com>. All submissions should refer to File No. SR-OCC-2004-03 and should be submitted by April 21, 2004.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> that the proposed rule change (File No. SR-OCC-2004-03) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

Margaret H. McFarland,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49466; File No. SR-PCX-2004-21]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges

March 24, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on March 11, 2004, the Pacific Exchange, Inc. ("PCX") 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 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 Pacific Exchange, Inc., through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its fee schedule for services provided to ETP Holders<sup>3</sup> and Sponsored Participants<sup>4</sup> that use the Archipelago Exchange ("ArcaEx") by: (1) Imposing a per-share transaction fee of \$0.001 for round lot orders for NYSE listed securities that take liquidity from the ArcaEx Book, and (2) reducing the per-share transaction fee for round lot orders for NYSE listed securities routed outside the ArcaEx Book from \$0.004 to \$0.001. The fee schedule will remain unchanged for NYSE round lot orders residing in the ArcaEx Book that execute against inbound orders, NYSE odd lots, NYSE Cross Orders and credits, NASDAQ, Amex and other Tape B listed stocks. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

### SCHEDULE OF FEES AND CHARGES FOR EXCHANGE SERVICES—ARCHIPELAGO EXCHANGE: TRADE RELATED CHARGES

#### Exchange Transactions:

##### ETP Holders and Sponsored Participants<sup>1</sup> Round Lots

<i>NYSE Listed Securities</i> .....	[No transaction fee for orders executed in the Book]. No transaction fee for orders executed in the Book against Listed inbound orders. <i>\$0.001 per share for orders that take liquidity from the Book.</i> <i>\$0.001 per share for orders routed outside the Book.</i>
Listed Securities (except NYSE Listed Securities.	\$0.001 per share (applicable to inbound orders executed against orders residing in the Book).
Nasdaq Securities .....	\$0.003 per share (applicable to inbound orders executed against orders residing in the Book).
Routing Service .....	\$0.004 per share (applicable to orders in listed, <i>except NYSE Listed Securities</i> , and Nasdaq securities routed away and executed by another market center or participant).

<sup>1</sup> These transaction fees do not apply to: (1) Directed Orders, regardless of account type, that are matched within the Directed Order Process; (2) Directed Orders for the account of a retail public customer that are executed partially or in their entirety via the Directed Order, Display Order, Working Order, and Tracking Order processes (however, any unfilled or residual portion of a retail customer's order that is routed away and executed by another market center or participant will incur this transaction fee); (3) orders executed in the Opening Auction and the Market Order Auction; (4) Cross Orders; (5) commitments received through ITS; and (6) participants in the Nasdaq UTP Plan that transmit orders via telephone.

\* \* \* \* \*

### 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 proposes to modify the per-share round lot transaction fees for NYSE listed securities charged to ETP Holders and Sponsored Participants that execute trades on ArcaEx. The PCX currently does not charge ETP Holders

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

<sup>6</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> See PCXE Rule 1.1(n) (defining "ETP Holder").

<sup>4</sup> See PCXE Rule 1.1(tt) (defining "Sponsored Participant").

or Sponsored Participants a transaction fee when round lot orders in NYSE listed securities entered by the ETP Holder or the Sponsored Participant take liquidity from the ArcaEx Book. The PCX proposes to implement a \$0.001 transaction fee for round lot orders that take liquidity from the ArcaEx Book. The PCX also proposes to reduce the transaction fee it charges for round lot orders in NYSE listed securities routed outside the ArcaEx book to \$0.001 from \$0.004 per share. The rationale for these changes is to make the pricing for executions on the ArcaEx in NYSE listed securities more competitive.<sup>5</sup> The PCX evaluated the economics of modifying transaction fees for NYSE listed securities and determined that this was feasible and appropriate, given the costs involved and competitive concerns.

## 2. Statutory Basis

The PCX believes that the proposal is consistent with section 6(b) of the Act,<sup>6</sup> in general, and section 6(b)(4) of the Act,<sup>7</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 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*

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 has become effective pursuant to section

19(b)(3)(A)(ii) of the Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4<sup>9</sup> thereunder because it changes a fee imposed by the PCX. 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.<sup>10</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, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-PCX-2004-21, and 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 may 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 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-2004-21 and should be submitted by April 21, 2004.

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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<sup>5</sup> The PCX believes that the proposed rule change will cause its fees to be more closely comparable to those of its competitors, and states that the reduction in the routing fee will enhance its competitive position. Telephone conversation between Tania Blanford, Staff Attorney, Regulatory Policy, PCX, Bridget Farrell, Regulatory Analyst, Archipelago Holdings, LLC, and Tim Elliott, Regulatory Counsel, Archipelago Holdings, LLC, and Elizabeth MacDonald, Attorney, Division of Market Regulation ("Division"), Commission, March 16, 2004, and telephone conversation between Tania Blanford, Staff Attorney, Regulatory Policy, PCX, Tim Elliott, Regulatory Counsel, Archipelago Holdings, LLC, and Terri Evans, Assistant Director, Division, and Elizabeth MacDonald, Attorney, Division, March 22, 2004.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

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

<sup>11</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49467; File No. SR-Phlx-2004-17]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Equity and Index Option Fees**

March 24, 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 27, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 Phlx. On March 23, 2004, the Phlx filed an amendment to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Phlx proposes to amend its schedule of dues, fees and charges to: (1) extend its current specialist unit fixed monthly fee ("fixed monthly fee") and related Nasdaq-100 Index Tracking Stock ("QQQ")<sup>SM</sup> license fee for a six-

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Cynthia Hoekstra, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated March 22, 2004 ("Amendment No. 1"). In Amendment No. 1, the Phlx clarified that the election of the fixed monthly fee program applies to the program's entire six-month period; explained that the volume used to determine the fixed monthly fee is determined on a per specialist unit basis; explained that in the event that a new specialist unit acquires the QQQ options and elects to enter the fixed monthly fee program from March 1, 2004 through August 31, 2004, the Exchange will file a separate proposed rule change to set forth the applicable months for the calculation of the volume; and made some minor changes to clarify the text of the proposed rule change.

<sup>4</sup> The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares<sup>SM</sup>, Nasdaq-100 Trust<sup>SM</sup>, Nasdaq-100 Index Tracking Stock<sup>SM</sup>, and QQQ<sup>SM</sup> are trademarks or service marks of The Nasdaq Stock Market, Inc. ("Nasdaq") and have been licensed for use for certain purposes by the Phlx pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the "Index") is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust<sup>SM</sup>, or the beneficial owners of Nasdaq-100 Shares<sup>SM</sup>. According to the Phlx, Nasdaq has complete control and sole