

Exchange pays a license fee to a third party in connection with Exchange trading. The Exchange proposes to impose a Specialist License Fee on each specialist allocated an ICU issue that trades on the Exchange pursuant to unlisted trading privileges ("UTP") for which the Exchange pays a license fee. Between July 1, 2004, and December 31, 2004, the Exchange proposes to bill each such specialist quarterly for 100% of the applicable license fee payable by the Exchange, provided that the total amount billed to such specialist for the third and fourth quarters of 2004 will not exceed the amount of license fees payable by the Exchange for the first and second quarters of 2004. As of January 1, 2005, the Specialist License Fee will be billed to the specialist quarterly at 50% of the amount payable by the Exchange.

A license fee applicable to multiple issues of ICUs allocated to more than one specialist will be apportioned among such specialists based on the consolidated share volume represented by each issue subject to such license fee.

The Exchange believes it is appropriate to pass through to the specialist a portion of the ICU license fees payable by the Exchange in order to alleviate part of the financial obligation incurred by the Exchange in connection with trading ICUs for which third parties require licenses. The Specialist License Fee will operate on a partial cost recovery basis. The fee will apply to all ICUs currently traded on the Exchange pursuant to UTP for which the Exchange is required to pay a license fee, and to all such ICUs that may trade pursuant to UTP in the future.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b)(4) of the Act,<sup>4</sup> which requires that the rules of an exchange be designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, 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 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 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

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>5</sup> and subparagraph (f)(2) of Rule 19b-4<sup>6</sup> thereunder, because it establishes or changes a due, fee, or other charge.

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.<sup>7</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. Comments may be submitted by any of the following methods:

### Electronic comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2004-35 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NYSE-2004-35. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2004-35 and should be submitted on or before August 25, 2004.

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

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 04-17772 Filed 8-3-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50114; File No. SR-NYSE-2004-34]

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the New York Stock Exchange, Inc. To Amend NYSE Rule 103B With Respect to the Allocation Panel

July 29, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 29, 2004 the New York Stock Exchange, Inc. ("NYSE" 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 Exchange has filed the proposal as a "non-controversial" rule change pursuant to section 19(b)(3)(A)(iii) 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

<sup>8</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)(iii).

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

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

<sup>7</sup> See 15 U.S.C. 78s(b)(3)(C).

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

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 NYSE proposes to amend Exchange Rule 103B (Specialist Stock Allocation) to update the composition of the Allocation Panel. The Allocation Panel is the group of individuals from which an Allocation Committee is drawn. The Allocation Committee is the group involved in the assignment to specialist organizations of the companies listing on the Exchange. The Exchange proposes to change the number of persons on the Allocation Panel. The text of the proposed rule change appears below. Proposed new language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

#### **Rule 103B**

##### **Specialist Stock Allocation**

Securities listing on the Exchange will be allocated to specialist units according to such policies as are established and made known to the membership from time to time. These policies are stated below.

##### **Allocation Policy and Procedures**

I.—II.—No change.

##### **III. ALLOCATION PANEL**

###### **Composition**

The composition of the Allocation Panel reflects the committee structure and includes 28 Floor brokers, [13] 15 allied members (including the [5] 7 allied members serving on the Market Performance Committee), [9] 11 representatives of institutional investor organizations (including the [5] 7 representatives of institutional investor organizations serving on the Market Performance Committee), the 10 Floor broker Governors who are part of the panel by virtue of their appointment as Governors, and a minimum of 5 Senior Floor Official or Executive Floor Official brokers that have been appointed to the panel.

\* \* \* \* \*

### **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 NYSE 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, and Statutory Basis for, the Proposed Rule Change**

##### **1. Purpose**

Stocks listing on the Exchange are allocated to specialist organizations by the Allocation Committee pursuant to procedures contained in Exchange Rule 103B. The Allocation Panel is the resource from which the Allocation Committee is assembled. The Allocation Panel is appointed by the Exchange's Board of Directors from among individuals nominated by the Exchange's membership.

Exchange Rule 103B(III) sets forth the composition of the Allocation Panel. The rule currently provides for 13 allied members (including the five allied members serving on the Market Performance Committee ("MPC")) and nine representatives of institutional investor organizations (including the five representatives of institutional investor organizations serving on the MPC). However, the MPC Charter currently authorizes seven allied members and seven representatives of institutional investor organizations to serve on the MPC. In light of this, the Allocation Committee charter also provides for the seven allied members and seven representatives of institutional investor organizations serving on the MPC to be part of the Allocation Panel.

Accordingly, the Exchange proposes a technical amendment to NYSE Rule 103B(III) to conform the number of allied members and representatives of institutional investor organizations authorized in its rule with the number authorized by the Allocation Committee charter. The Exchange represents that the proposed amendment is not substantive in nature and does not change the way in which allocations are made.

##### **2. Statutory Basis**

The Exchange believes the proposed rule change is consistent with the requirement under Section 6(b)(5) of the Act<sup>5</sup> in that it is designed 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 Exchange believes

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

that the proposed rule change is consistent with these objectives in that it enables the Exchange to further enhance the process by which stocks are allocated to ensure fairness and equal opportunity in the process.

#### **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**

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**

Because the foregoing 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) does not become operative for 30 days after the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed 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>8</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. Comments may be submitted by any of the following methods:

#### **Electronic comments**

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an E-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

No. SR-NYSE-2004-34 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NYSE-2004-34. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2004-34 and should be submitted by August 25, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 04-17774 Filed 8-3-04; 8:45 am]

**BILLING CODE 8010-01-PSEB NW,**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50101; File No. SR-PCX-2004-51]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to a Proposed Rule Change Amending the Designated Options Examination Authority Fee on a Retroactive Basis

July 28, 2004.

On June 1, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("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 amend its Schedule of Fees and Charges by changing the Designated Options Examination Authority ("DOEA") fee charged to its members. The Exchange proposed to apply the fee changes on a retroactive basis effective as of January 2004.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on June 18, 2004.<sup>4</sup> The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>5</sup> and, particularly, section 6(b)(4) of the Act, which requires that the rules of an exchange provides for the equitable allocation of reasonable fees among its members.<sup>6</sup> The current DOEA fee is a pass through of the costs the Exchange pays the National Association of Securities Dealers for conducting DOEA examinations plus a 17% administrative charge. The Commission believes that the Exchange's proposal to apply its current DOEA fee on a retroactive basis to January 2004 is equitable because it allows the Exchange to charge members the actual costs of the examinations.

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

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

<sup>3</sup> On April 15, 2004, the Exchange filed an identical amendment to its Schedule of Fees and Charges, as immediately effective. See Securities Exchange Act Release No. 49671 (May 7, 2004), 69 FR 27665 (May 17, 2004) (File No. SR-PCX 2004-32). Because the Exchange also sought to apply the amendment to the DOEA fee on a retroactive basis, the Exchange submitted the proposed rule change for notice and comment.

<sup>4</sup> See Securities Exchange Act Release No. 49828 (June 8, 2004), 69 FR 34210.

<sup>5</sup> In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-PCX-2004-51) is approved.

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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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50108; File No. SR-PCX-2004-66]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. To Implement Price Collars on its Archipelago Exchange Facility During the Closing Auction

July 28, 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 July 13, 2004, 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 PCX. On July 27, 2004, the PCX filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, has been filed by PCX under Rule 19b-4(f)(6) under the Act.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</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> Letter from Mai Shiver, Director and Senior Counsel, Regulatory Policy, PCX to Alton Harvey, Assistant Director, Division of Market Regulation, Commission, dated July 22, 2004. ("Amendment No. 1"). In Amendment No. 1, the PCX explained that in certain instances where the Closing Auction is priced at the midpoint of the NBBO, and where the price collars would otherwise be invoked, the Closing Auction would be priced at the midpoint of the NBBO.

<sup>4</sup> 17 CFR 240.19b-4(f)(6). For purposes of determining the effective date and calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers that period to commence on July 27, 2004, the date PCX filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

<sup>9</sup> 17 CFR 200.30-3(a)(12).