

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.⁹

J. Lynn Taylor,

Assistant Secretary.

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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")¹ and Rule 19b-4 thereunder,² 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 2004.³ The proposed rule change was published for comment in the **Federal Register** on June 18, 2004.⁴ 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 exchange⁵ 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.⁶ 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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.

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

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

⁶ 15 U.S.C. 78f(b)(4).

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

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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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"),¹ and Rule 19b-4 thereunder,² 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.³ The proposed rule change, as amended, has been filed by PCX under Rule 19b-4(f)(6) under the Act.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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.

⁴ 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).

⁹ 17 CFR 200.30-3(a)(12).