

Number SR–NSCC–2004–02 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–NSCC–2004–02. 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 NSCC and on NSCC's Web site at <http://www.nsc.com>. 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–NSCC–2004–02 and should be submitted on or before June 7, 2004.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49671; File No. SR–PCX–2004–32]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Amending the Designated Options Examination Authority Fee

May 7, 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 April 15, 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 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 its Schedule of Fees and Charges by changing the Designated Options Examination Authority (“DOEA”) fee charged to its members. The text of the proposed rule change is available at the Commission and the PCX.

#### 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.

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

###### 1. Purpose

In 2003, the Exchange filed a proposed rule change that allowed the Exchange to assess a \$2000/month DOEA fee in order to recover the Exchange's costs of DOEA examinations

for which it would be responsible.<sup>3</sup> At the time the Exchange set DOEA fee, it contemplated that it would conduct some of the examinations itself and would contract with the NASD to conduct other examinations. For that reason, the Exchange adopted a flat fee of \$2000/month based upon the preexisting \$2000/month Designated Examination Authority (“DEA”) fee. The Exchange anticipated that the costs of the examinations, whether conducted by the NASD or by the Exchange, would be about the same as the costs of the DEA examinations.

The Exchange has relied exclusively on the NASD to conduct its DOEA examinations and as a result, believes it is appropriate to amend its Schedule of Fees and Charges to change its DOEA fee from \$2000/month to a fee that would be a pass through of the costs that the Exchange pays the NASD for conducting DOEA examinations plus a 17% administrative charge. The PCX believes that since the current DOEA fee applies to all firms, even to smaller firms that conduct largely equities business, but also do occasional options trades for their public customers, assessing a flat fee for all firms regardless of the number of Registered Representatives that they maintain, is inequitable. The Exchange represents that the 17% percent administration fee that it proposes to charge relates directly to costs actually incurred by the Exchange in the administration of this program.

###### 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 fees 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.

<sup>3</sup> See Securities Exchange Act Release No. 47577 (March 26, 2004), 68 FR 16109 (April 2, 2003) (File No. SR–PCX–2003–03).

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

<sup>5</sup> 15 U.S.C. 78f(b)(4).

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>9</sup> 17 CFR 200.30–3(a)(12).

### 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>6</sup> and Rule 19b-4(f)(2)<sup>7</sup> thereunder, because it changes a fee imposed by the Exchange. 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.

### 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>);
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PCX-2004-32 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-PCX-2004-32. 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 20549-0609. Copies of such filing also will be available for

inspection and copying at the principal office of the PCX. 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-PCX-2004-32 and should be submitted on or before June 7, 2004.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49664; File No. SR-PCX-2004-22]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Pacific Exchange, Inc. and Notice of Filing and Order Granting Accelerated Approval To Amendment No. 2 Creating a New Order Type Entitled "Auto Q Order"

May 6, 2004.

#### I. Introduction

On March 19, 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 regarding a new order type. On March 29, 2004, PCX submitted Amendment No. 1 to the proposal.<sup>3</sup> The proposed rule change, as modified by Amendment No. 1, was published for notice and comment in the **Federal Register** on April 6, 2004.<sup>4</sup> The Commission received no comment letters on the proposal. On May 5, 2004, the PCX submitted Amendment No. 2 to the proposal.<sup>5</sup>

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See letter from Mai S. Shiver, Acting Director and Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 26, 2004 ("Amendment No. 1"). Amendment No. 1 superseded and replaced the original rule filing in its entirety.

<sup>5</sup> See Securities Exchange Act Release No. 45906 (March 30, 2004), 69 FR 18146.

<sup>6</sup> See letter from Mai S. Shiver, Acting Director and Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated

This order approves the proposed rule change, as modified by Amendment No. 1. Simultaneously, the Commission provides notice of filing of Amendment No. 2 and grants accelerated approval of Amendment No. 2.

#### II. Description of the Proposed Rule Change

As part of its efforts to enhance participation on the Archipelago Exchange facility ("ArcaEx"), PCX proposes to amend its rules governing ArcaEx to implement a new functionality type that would enable Market Makers<sup>6</sup> to automatically update their Q Orders.<sup>7</sup> The Exchange proposes to add an automatic updating feature called "Auto Q" that would automatically repost a Q Order in the ArcaEx book, after an execution, at a designated increment inferior to the price at which it was originally posted and for the same amount of shares. The Auto Q Order would continue to repost in the ArcaEx book, after an execution, at the determined increment and size until the total tradable size threshold is reached.

When entering an Auto Q Order, a Market Maker would establish the following parameters: (i) Price; (ii) size; (iii) buy or sell; (iv) increment update; and (v) total tradable size. Auto Q Orders will be governed by the price, time priority rules and order execution rules established in PCXE Rule 7.36. For example, superior priced displayed orders would be executed prior to Auto Q Orders and Auto Q Orders will not have precedence over same-priced displayed orders that are superior in time. Each reposted Auto Q Order would be assigned a new price, time priority as of the time of each reposting.<sup>8</sup> Further, Auto Q Orders that are reposted at the same price as a non-displayed order would take precedence in accordance with PCXE Rule 7.36.

#### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether it is consistent with the Act. Comments may be submitted by any of the following methods:

May 4, 2004 ("Amendment No. 2"). In Amendment No. 2, PCX revised the rule text to clarify that Auto Q Orders would be assigned a new price time priority as of the time of each reposting.

<sup>6</sup> PCXE Rule 1.1(u) defines Market Maker as an ETP Holder that acts as a Market Maker pursuant to PCXE Rule 7.

<sup>7</sup> See PCXE Rule 7.31 (defining "Q Orders" as limit orders that are submitted to ArcaEx by Market Makers) and 7.34 (specifying Market Makers' obligations to enter Q Orders).

<sup>8</sup> See Amendment No. 2, *supra* note 5.

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

<sup>7</sup> 17 CFR 240.19b-4(f)(2).