

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, participants or Others

The NYSE has engaged in on-going dialogue regarding the proposed rule change and other aspects of the Pilot Program with Commission staff, as well as with the Committee. The proposed fee changes were developed and approved by the Committee. In the Committee Letter, the Committee asserts that the proposed fees appear reasonable in light of the service levels required and the overall costs associated with the elimination of duplicate mailings, that the proposed fees reflect the economies of scale of the Large Issuers and that the Guidelines should be made permanent.

In addition, the NYSE has received other comment letters on the proposed fee changes from the Securities Industry Association ("SIA"), the American Society of Corporate Secretaries ("ASCS") and the Association of Publicly Traded Companies ("APTC").¹⁵ SIA, ASCS and APTC all endorse the proposed fee changes. APTC notes in its letter that the Pilot Program provided a \$235 million reduction in costs in 2001 from mail suppressions and is projected to provide savings of more than twice that amount by 2005. APTC also posits that the large volumes and low incremental cost of transmitting proxy materials for Large Issuers justify their payment of lower rates than Small Issuers.

Several of the Commission releases approving changes to the Pilot Program included language encouraging interested parties to consider approaches that would foster competition in the proxy distribution service industry. The releases also suggested that market forces, rather than regulators, should determine reasonable rates for proxy distribution services.

The Exchange views the Guideline-setting process as an on-going matter. Even if the Commission grants permanent status to the Guidelines, the Exchange intends to continue to meet with the Committee to evaluate and tune the Guidelines and to consider possible approaches to broader reform of the proxy distribution system.

¹⁵ See letter to Richard A. Grasso, Chairman and Chief Executive Officer, NYSE, from Donald D. Kittell, Executive Vice President, SIA, dated November 29, 2001 (the "SIA Letter"); letter to James E. Buck, Senior Vice President and Secretary, NYSE, from Brian T. Borders, President, APTC, dated November 29, 2001 (the "APTC Letter"). Those letters are included in Exhibit D to the Exchange's proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(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 rule 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. 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 NYSE. All submissions should refer to File No. SR-NYSE-2001-53 and should be submitted by February 6, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45262; File No. SR-PCX-2001-47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, Amendment No. 1, and Amendment No. 2 Thereto by the Pacific Exchange, Inc. Establishing a New Exchange Fee Based on the Number of Order Cancellation Routed Through the Exchange's Member Firm Interface

January 9, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, notice is hereby given that on November 27, 2001, the Pacific Exchange, Inc. ("PCX" 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. On December 13, 2001, the PCX submitted Amendment No. 1 to the proposed rule change.³ On December 26, 2001, the PCX submitted Amendment No. 2 to the proposed rule change.⁴ 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 PCX proposes to establish a new fee based upon the number of order cancellations that are routed through the MFI.

The text of the proposed rule change, as amended, is available at the Office of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Cindy L. Sink, Senior Attorney, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 12, 2001 ("Amendment No. 1"). In Amendment No. 1, the PCX amended note 2 to the PCX Fee Schedule entitled "Options: Trade-Related Charges" to clarify that the fee will be assessed when the total number of orders an executing clearing member cancels through the PCX Member Firm Interface ("MFI") in a particular month exceeds the total number of orders that member executes through the MFI in that same month.

⁴ See letter from Cindy L. Sink, Senior Attorney, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated December 21, 2001 ("Amendment No. 2"). In Amendment No. 2, the PCX clarified the purpose of the proposed rule change. For purposes of calculating the 60-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 December 26, 2001, the date the PCX filed Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

¹⁶ 17 CFR 200.30-2(a)(12).

the Secretary, PCX 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 PCX included statements concerning the purpose of and basis for the proposed rule change, as amended, 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

The Exchange is proposing to establish a fee to deal with various operational problems and costs resulting from the practice of immediately following orders routed through the Exchange's automated MFI with a cancel request. Since these orders frequently come in large numbers, components, of the MFI, such as the Floor Broker Hand Held Terminals ("HHTs"), can very quickly become backlogged, which increases Exchange costs and adversely impacts public customers, their clearing firms, and Lead Market Makers by making the execution of other customer orders less timely. A high volume of cancellations sent through the MFI to HHTs or to the Exchange's Limit Order Book also increases Exchange costs by requiring the Exchange to spend increased amounts on systems and other hardware to process increased order traffic flow.⁵

Under the proposed fee, the executing Clearing Member would be charged \$1.00 for every order that it cancels through the MFI in any month where the total number of cancellations sent by the executing Clearing Member exceeds the total number of orders that same firm executed through the MFI in that same month. This fee will not apply to executing Clearing Members that cancel fewer than 500 orders through the MFI in a given month. The Exchange believes that the fee will help ease backlogs on the MFI and particularly HHTs.

⁵ This sentence was clarified to reflect a telephone conversation between Cindy L. Sink, Senior Attorney, PCX, and Gordon Fuller, Counsel to the Assistant Director and Frank N. Genco, Attorney, Division, Commission, (January 3, 2002).

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,⁶ in general, and section 6(b)(4) of the Act,⁷ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and 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, as amended, will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A)(ii) of the Act⁸ and subparagraph (f)(2) of Rule 19b-4⁹ thereunder, because it establishes or changes a due, fee, or other charge.¹⁰ At any time within 60 days of December 26, 2001, the Commission may summarily abrogate such proposed rule change, as amended, 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.¹¹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule 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

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ The Exchange's proposed rule change is substantially similar to a fee instituted by the Chicago Board Options Exchange, Inc., which became immediately effective on July 27, 2001, and a fee instituted by the American Stock Exchange LLC, which became immediately effective on November 27, 2001. See Securities Exchange Act Release Nos. 44607 (July 27, 2001), 66 FR 40757 (August 3, 2001), (Notice of Filing and Immediate Effectiveness, SR-CBOE-2001-40); and 45110 (November 27, 2001), 66 FR 63080 (December 4, 2001), (Notice of Filing and Immediate Effectiveness, SR-Amex-2001-90).

¹¹ See 15 U.S.C. 78(b)(3)(C).

Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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-2001-47 and should be submitted by February 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45255; File No. SR-SCCP-00-01]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Order Approving a Proposed Rule Change Relating to the Eligibility of Holders of Equity Trading Permits Issued by the Philadelphia Stock Exchange, Inc. To Be Participants of the Stock Clearing Corporation of Philadelphia

January 9, 2002.

On January 12, 2000, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") and on May 31, 2000, amended a proposed rule change (File No. SR-SCCP-00-01) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on September 1, 2000.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change amends SCCP's rules to permit holders of Equity Trading Permits ("ETPs") issued by the

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 43210 (August 25, 2000), 64 FR 53259.