

in Item IV below. The CBOE 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 proposes to amend its Fees Schedule to reduce public customer transaction fees and the license fee assessed to the Designated Primary Market-Maker ("DPM") and market-makers in options on the RUT.

Specifically, the Exchange proposes to reduce public customer transaction fees to \$.15 per contract for transactions in RUT options. Currently, RUT customer transaction fees are \$.45 per contract if the premium is greater than or equal to \$1 and \$.25 per contract if the premium is less than \$1. The Exchange believes this proposed fee reduction will help the Exchange compete more effectively for order flow in the RUT product.

The Exchange also proposes to reduce from \$.40 per contract to \$.10 per contract the license fee that is currently assessed on all DPM and market-maker transactions in RUT options ("RUT License Fee"). The RUT License Fee is assessed by the Exchange to help it recoup the license fees the Exchange pays to the Frank Russell Company ("Russell") for its license to trade the RUT product.<sup>6</sup> The Exchange recently renegotiated its license agreement with Russell. The license fees owed to Russell have been lowered in conjunction with the renegotiated agreement. As a result, the Exchange has determined to reduce the amount of the RUT License Fee as well as eliminate the requirement that the RUT DPM make up any shortfall between the proceeds of the RUT License Fee and the Exchange's license obligation to Russell.

The Exchange intends to implement these fee changes on May 1, 2005.

**2. Statutory Basis**

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>8</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE 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*

No written comments were solicited or received with respect to the proposed rule change.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>10</sup>

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>11</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, as amended, 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-CBOE-2005-31 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-CBOE-2005-31. 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 CBOE. 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-CBOE-2005-31 and should be submitted on or before July 5, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51795; File No. SR-PCX-2005-67]

**Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Exchange Fees and Charges**

June 7, 2005.

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 May 6, 2005, 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 PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>6</sup> See Securities Exchange Act Release No. 49601 (April 22, 2004), 69 FR 23836 (April 30, 2004) (SR-CBOE-2004-19).

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> See *supra* note 3.

<sup>12</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.

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

The PCX, through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its Schedule of Fees and Charges in order to modify the list of eligible strategies that apply to Option Strategy Executions retroactive to January 1, 2005. The text of the proposed rule change is available on the PCX's Web site (<http://www.pacificex.com>), at the PCX's Office of the Secretary, and at the Commission's Public Reference Room.

## **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. 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**

In a separate rule filing, SR-PCX-2005-65,<sup>3</sup> the PCX proposed to modify the list of strategies presently included in the fee that applies to Option Strategy Executions to add two strategies: (1) short interest spreads and (2) merger spreads. That rule filing is prospective. The purpose of this rule filing is to make one of these same changes retroactive to January 1, 2005.

In SR-PCX-2005-65, the PCX added to its strategy fee cap a strategy used to capture short stock interest. The "short stock interest spread" is defined as a spread that uses two deep in the money put options followed by the exercise of the resulting long position of the same class in order to establish a short stock interest arbitrage position.<sup>4</sup>

Because the short stock interest spread transactions are generally executed by professionals whose profit margins are generally narrow, the Exchange proposes to cap the transaction fees associated with such executions at \$1,000 per strategy

execution with a monthly cap of \$50,000 per initiating firm.

The PCX seeks to make this fee change retroactive because short stock interest spreads have been executed by customers of the PCX with the understanding, based on conversations with Exchange staff, that these strategies were included in a group of strategies that already qualified for reduced rates and fees under the previously approved Option Strategy Execution rate plan. The PCX is applying to make this fee change retroactive to January 1, 2005 so that the Exchange may make adjustments to the accounts of all customers that may have executed short interest spreads from that date forward based on their understanding that the fees for such transactions were capped. The Exchange believes that by retroactively lowering these fees, the Exchange will not only be correcting customers accounts for previously executed trades but will be able to continue to attract liquidity by accommodating these transactions.

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

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>6</sup> in particular, in that it provides for the equitable allocation of dues, fees, and other charges 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 on the proposed rule change were neither solicited nor received.

## **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 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-PCX-2005-67 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-0609.

All submissions should refer to File Number SR-PCX-2005-67. 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, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-0609. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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-2005-67 and should be submitted on or before July 5, 2005.

<sup>3</sup> See Securities Exchange Act Release No. 51787 (June 6, 2005).

<sup>4</sup> In SR-PCX-2005-65, the PCX also added merger spreads to the strategy fee cap rule, but PCX is not seeking to make that change retroactive and so merger spreads are not a part of this filing.

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

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

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51791; File No. SR-PCX-2005-22]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Use of a Third Party to Maintain a Member's Books and Records

June 6, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 under the Act,<sup>2</sup> notice is hereby given that on May 18, 2005, 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. These 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 Exchange proposes to amend PCX Rule 9.17 and PCX Equities, Inc. ("PCXE") Rule 9.17 to include a provision requiring OTP Holders, OTP Firms, and ETP Holders (collectively, "Holders") to provide the Exchange with a copy of the written undertaking required to be filed with the Commission pursuant to Rule 17a-4(i) under the Act when a third party maintains the Holder's books and records.

The text of the proposed rule change is available on the PCX's Internet Web site (<http://www.pacificex.com>), at the principal office of the PCX, and at the Commission's Public Reference Room.

#### 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 purpose of this proposal is to amend PCX Rule 9.17 and PCXE Rule 9.17 to require a Holder to provide the PCX with a copy of the written undertaking required to be filed with the Commission pursuant to Rule 17a-4(i) under the Act when an outside service bureau maintains the Holder's books and records. Rules 17a-3 and 17a-4 under the Act set forth various provisions that require members of a national securities exchange to make, keep current, and preserve certain books and records. In addition, paragraph (i) of Rule 17a-4 specifies that if such records are prepared or maintained by an outside service bureau, depository, bank, or other recordkeeping service on behalf of the member, such outside entity must file with the Commission a written undertaking, signed by a duly authorized person, specifying that the records prepared or maintained for the member are the property of the member, that the records are subject to examination by the Commission or its designee, and that copies of the records shall be promptly furnished upon request to the Commission or its designee.

Currently, PCX Rule 9.17 and PCXE Rule 9.17 provide that OTP Holders, OTP Firms, and ETP Holders shall make and retain all the books and records prescribed by the bylaws and rules of the Exchange, the rules and regulations of the Commission, and any other rules and regulations to which the Holder is subject. Such books and records must be retained for periods as prescribed and shall be made available for inspection by the Exchange. The Exchange proposes to add a provision to PCX Rule 9.17 and PCXE Rule 9.17 to require that if such books and records are prepared or maintained by an outside service bureau, depository, bank or other recordkeeping service on behalf of the Holder, the Holder must provide the Exchange with a copy of the written undertaking required to be filed with the Commission pursuant to Rule 17a-4(i) under the Act for the Exchange's records.

The Exchange believes it is important for the Exchange to receive a copy of the written undertaking to ensure that the Commission was properly notified that the books and records of a member are being maintained by a third party. In addition, by receiving a copy of the written undertaking, the Exchange will have information with respect to the Holders' books and records that is necessary for inspection purposes.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>3</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>4</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate 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 either solicited or received.

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

The proposed rule change is being designated by the Exchange as "non-controversial" pursuant to Section 19(b)(3)(A) of the Act<sup>5</sup> and subparagraph (f)(6) of the Rule 19b-4 under the Act<sup>6</sup> because the proposed 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 from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The PCX provided the Commission with written notice of its intent to file this proposed rule change, along with a brief description and text of the proposed rule change, at least five

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 217 CFR 240.19b-4.

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

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

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

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