

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. 34-45395; File No. SR-PCX-2001-33]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1, To Adopt Procedures for the Transfer of Options Positions

February 5, 2002.

On August 10, 2001, the Pacific Exchange, Inc. ("PCX") 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 adopt procedures for the transfer of options positions. On December 11, 2001, the Exchange amended the proposal to: (1) Clarify the intent of the rule that after the proper request has been completed, a transfer will be automatically permitted when the transfer satisfies one of the specified categories set forth in proposed Rule 6.78(d)(1); (2) revise Item 8 to state that the proposed rule change is based, in part, on Chicago Board Options Exchange Rule 6.49A; and (3) make technical changes to the rule text.³

The proposed rule change, as amended, was published for comment in the **Federal Register** on December 31, 2001.⁴ 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, in particular, the requirements of section 6 of the Act⁶

and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act⁷ because it establishes which position transfers may occur off the floor and which position transfers must be offered to the floor, and the procedures for effecting such transfers. The Commission believes differentiating between on floor and off floor position transfers and clearly delineating the procedures for effecting such transfers, will aid in the orderly transfer of option positions which should help to perfect the mechanism of a free and open market and a national market system, and further the public interest.⁸

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-PCX-2001-33), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45396; File No. SR-PCX-2002-05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Hearing Fees for Issuer Requests for Review of Delisting Decisions

February 5, 2002.

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 January 18, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary PCX Equities, Inc. ("PCXE" or "Corporation") 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 PCXE. The Commission is publishing this notice to

¹ 15 U.S.C. 78f(b)(5).

² The Commission also notes that the proposed rule change is based, in part, on Chicago Board Options Exchange Rule 6.49A, which the Commission approved on December 28, 1995. See Securities Exchange Act Release No. 36647, 61 FR 566 (January 8, 1996).

³ 15 U.S.C. 78s(b)(2).

⁴ 17 CFR 200.30-3(a)(12).

⁵ 15 U.S.C. 78s(b)(1).

⁶ 17 CFR 240.19b-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 Exchange, through its wholly owned subsidiary PCXE, proposes to amend PCXE Rule 5.5(m) to require issuers to pay an appeal hearing fee of \$2,500 in connection with their appeal of the Corporation's decision to delist a security. The text of the proposed rule change is available at the Office of the Secretary, the PCX, and 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 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

PCXE Rule 5.5(m) provides the procedures with which the Corporation complies in determining to delist a security for other than routine reasons (such as redemptions, maturities, etc.). In order to determine whether the security meets the maintenance criteria, the Corporation relies upon the objective data furnished by the issuer.³ If it appears that the security no longer meets the maintenance requirements, the Corporation notifies the issuer in writing describing the basis on which the Corporation is considering delisting the security and proposes to meet with the issuer to hear reasons why the issuer believes the security should not be delisted.⁴ If the issuer does not provide a sufficient basis demonstrating that it meets the current listing criteria, the Corporation will notify the issuer that it proposes to delist the security and that the issuer has the right to appeal the decision.⁵ An issuer who wishes to appeal may, within five days of

³ See PCXE 5.5(a), Maintenance Requirements and Delisting Procedures.

⁴ See PCXE 5.5(m)(1), Delisting Procedures.

⁵ See PCXE 5.5(m)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter dated December 10, 2001 from Cindy Sink, Senior Attorney, Regulatory Policy, PCX, to Joseph Morra, Special Counsel, Division of Market Regulation, Commission and attachments ("Amendment No. 1").

⁴ See Securities Exchange Act Release No. 45188 (December 21, 2001), 66 FR 67606.

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

⁶ 15 U.S.C. 78f.