

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and paragraph (f)(2) of Rule 19b-4 thereunder¹⁴ because it is establishing or changing a due, fee, or other charge applicable only to the Exchange's members. 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>); or
- (Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2005-101 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-PCX-2005-101. 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 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-2005-101 and should be submitted on or before September 30, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52371; File No. SR-PCX-2005-68]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto To Modify Rate Schedule Retroactively To January 1, 2002 To Cap the Fees on Multiple Options Issues Transfers

August 31, 2005.

On May 13, 2005, 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 modify its rate schedule retroactively to January 1, 2002 to cap the fees on multiple options issues transfers. The Exchange amended the proposal on July 1, 2005.³ The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on July 27, 2005.⁴ The Commission did not receive comments

on the proposal. This order approves the proposed rule change, as amended.

PCX proposes to cap the fees on multiple options issues transfers. Currently, PCX charges a Lead Market Maker ("LMM") that has been allocated an options issue \$1,000 per issue if the LMM transfers the options issue to another LMM.⁵ PCX originally adopted the fee to help offset its administrative and technological costs related to transferring an options issue. While PCX believes it is still accurate to charge \$1,000 for the transfer of one issue, when multiple issues are transferred as part of a single transaction, the overall costs of PCX associated with the transfer may be reduced. When multiple issues are transferred as part of a single transaction, PCX believes that charging the full \$1,000 on every transferred issue with no limit to the total charges is not the original intent of the transfer fee.

PCX proposes to continue charging \$1,000 per issue transferred, but cap the fee at \$15,000 for the first one hundred issues transferred, and \$5,000 for every one hundred (or any part of) additional issues transferred. To qualify for the rate cap, all transfers must be deemed to be part of a single transaction and meet the PCX Transfer of Issues Guidelines. The new fee cap would allow PCX to more accurately assess an LMM the technological and administrative costs associated with the transfer of allocated issues. PCX proposes to make this fee effective retroactive to January 1, 2002, the date the transfer fee was first effective, so that it would have the ability to make any adjustments it deems necessary to allow previous charges to properly reflect the true intent of the transfer fee. Further, PCX represented that it would review all past transfers to determine if any adjustments are warranted pursuant to the proposed rate schedule.

After careful review of the proposed rule change, as amended, 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 exchange.⁶ Specifically, the Commission believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁷ in that it provides for the equitable

⁵ According to PCX, options issue transfers are conducted in accordance with PCX Transfer of Issues Guidelines. See PCX Regulatory Information Bulletin RBO-03-09 (August 11, 2003).

⁶ In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(4).

¹⁵ CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced and superseded the original proposal.

⁴ See Securities Exchange Act Release No. 52090 (July 20, 2005), 70 FR 43492.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(2).

allocation of reasonable dues, fees, and other charges among the Exchange's members. The Commission believes that the proposal should allow the Exchange to more accurately charge LMMs the Exchange's true costs when multiple options issues are transferred. Further, the Commission believes that by making the proposal retroactive to January 1, 2002, the Exchange could make adjustments to past transfers in accordance with the original intent of the fee.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-PCX-2005-68) and Amendment No. 1 are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Jonathan G. Katz,
Secretary.

[FR Doc. E5-4928 Filed 9-8-05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

State Court Decision Affecting Recordation of Artisan Liens

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: Consistent with Agency policy, the Federal Aviation Administration (FAA) gives notice of the holding in *Creation Aviation, Inc., vs. Textron Financial Corporation*, Florida District Court of Appeal, Fourth District, No. 4D04-2178, decided on April 27, 2005. The Court in *Creston* held that Federal law pertaining to recording with the FAA Aircraft Registry did not preempt a Florida statute requiring that an artisan lien for work on an aircraft first be filed in the county where the work was performed in order to enforce the lien under Florida law. Accordingly, the FAA is advising the public that recording an artisan lien with the FAA Aircraft Registry only, may be insufficient to enforce an artisan lien under Florida law.

FOR FURTHER INFORMATION CONTACT: Joseph R. Standell, Aeronautical Center Counsel, Monroney Aeronautical Center (AMC-7), Federal Aviation Administration, 6500 S. MacArthur, Oklahoma City, OK 73169; Telephone (405) 954-3296.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 44107, the FAA maintains an aircraft registry that records "conveyances that affect an interest in civil aircraft of the United States."

The FAA published notice in the **Federal Register** that the FAA Aircraft Registry would record artisan liens on aircraft that met the minimum requirements of state statute. The notice stated that, for aircraft, "there is Federal preemption of place of filing: The FAA Aircraft Registry at Oklahoma City." 46 FR 61528, December 17, 1981. The sole purpose of that notice was to set out the criteria for recording artisan liens with the FAA Aircraft Registry.

Florida Statutes, F.S.A. 329.01, requires all liens of affecting civil aircraft to be filed with the Federal Aviation Administration. F.S.A. 329.51 provides that aircraft liens are enforceable provided the lienor records a verified lien notice with the clerk of the circuit court in the county where the aircraft was located when services were furnished.

In *Creston*, a fixed base operator attempted to foreclose a mechanic's lien that had been filed and recorded with the FAA consistent with 49 U.S.C. 44107 and F.S.A. 329.01. However, the Florida Court of Appeal held that the fixed base operator's failure to file a notice of lien in the county where the work was performed rendered the lien unenforceable under state law.

The Florida Court of Appeal did not accept the fixed base operator's argument that state or local filing requirements contained in F.S.A. 329.51 were preempted by Federal law. The Court in *Creston* cited *Holiday Airlines Corporation v. Pacific Propeller, Inc.*, 620 F.2d 731 (1980), which had similar facts. The Court in *Holiday* held that a lien filed with the FAA was enforceable, notwithstanding a lienor's failure to file in the State of Washington. The Court held that the "federal recording statute, and rules implementing it, clearly preempt the filing requirements of Washington law." On the other hand, the Court in *Holiday* held that "matters touching on the validity of liens are determined by underlying State law."

The Florida Court of Appeal accepted the argument that until a lien on a civil aircraft is recorded with the FAA Aircraft Registry, it is valid only against those persons with actual notice and their heirs and devisees and that after the lien is filed with the FAA, it is valid against all persons. However, the Court determined that the State of Florida is not precluded from imposing

requirements, including local filing requirements that affect the enforceability of aircraft liens in Florida.

Interested parties may wish to research state lien statutes to determine if local requirements affect enforceability of artisan liens recorded with the FAA.

Issued in Oklahoma City on September 1, 2005.

Joseph R. Standell,

Aeronautical Center Counsel.

[FR Doc. 05-17835 Filed 9-8-05; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-2005-53]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 29, 2005.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA-2005-22172 and FAA-2005-21814] by any of the following methods:

- Web Site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).