

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50668; File No. SR-PCX-2004-90)

November 16, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. to Extend the Applicability of the Cross-and-Post Functionality on the Archipelago Exchange Facility to PNP Cross Orders

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 November 3, 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 PCX. On November 10, 2004, the PCX filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Exchange proposed the rule change under Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders it effective upon filing.<sup>6</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 replaced and superseded the original filing in its entirety.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> For purpose 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 November 10, 2004, the date that the PCX filed Amendment No. 1.

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 rules relating to the Cross and Post Order to make clear that this order type applies to PNP Cross Orders.

The text of the proposed rule change, as amended, is below. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

**Rule 7  
Equities Trading**

**Rule 7.31 Orders and Modifiers**

(a) – (r) – No change.

(s) (1) – (2) – No change.

(3) Following the execution parameters described above, any unexecuted portion of a Cross Order shall be cancelled, unless the Cross Order has been designated as a Cross and Post, as defined in Rule 7.31(ff), in which case any unexecuted portion will be displayed in Arca Book at the cross price.

(t) – (aa) – No change.

(bb) PNP (Post No Preference) Cross Order. A Cross Order that is to be executed in whole or in part on the Corporation and the portion not so executed is to be canceled, without routing any portion of the Cross Order to another market center.

When the cross price is equal to or better than the NBBO and is at the BBO, the relevant portion of the PNP Cross Order will be matched first against displayed orders with priority in the Arca Book, and then the remainder of the PNP Cross Order will be matched. Any unexecuted portion of the PNP Cross will be canceled, unless the PNP Cross Order has been designated as a Cross and Post, as defined in Rule 7.31(ff), in which case any unexecuted portion will be displayed in Arca Book at the cross price. The Corporation will cancel either the entire PNP Cross Order at the time of order entry, or the unexecuted portion of a PNP Cross Order (whether or not it has been designated as a Cross and Post) at any time during the order execution process, whichever is applicable, if:

- (1) the cross price would cause an execution at a price that trades through the NBBO, except as provided in Rule 7.37;
- (2) the cross price is between the BBO and does not improve the BBO by the MPII pursuant to Rule 7.6(a), Commentary .06.

(cc) – (ee) - No Change.

(ff) Cross-and-Post Order. A Cross Order or PNP Cross Order that is to be executed in whole or in part on the Corporation [pursuant to Rule 7.31(s)] where any unexecuted portion of the Cross-and-Post Order will be displayed in the Arca Book at the cross price.

- (1) – (2) – No Change.

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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

As part of its continuing efforts to enhance participation on the Archipelago Exchange (“ArcaEx”) facility, the PCX is proposing to amend PCXE Rule 7.31(ff) to clarify that the Cross-and-Post Order type may be applied to the PNP (Post No Preference) Cross Order type.<sup>7</sup>

Currently, PCXE Rule 7.31(ff) states that the Cross-and-Post Order functionality is limited to Cross Orders defined in PCXE Rule 7.31(s).<sup>8</sup> PCXE Rule 7.31(s) defines the basic ArcaEx Cross Order. Because the ArcaEx rulebook now includes cross order types defined in other paragraphs of PCXE Rule 7.31, the Exchange proposes to clarify PCXE Rule 7.31(ff) so that the Cross-and-Post functionality will be understood to be available for PNP Cross Orders.

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<sup>7</sup>

See PCXE Rule 7.31(bb).

<sup>8</sup>

The relevant portion of PCXE Rule 7.31(ff) reads: “A Cross Order that is to be executed in whole or in part on the Corporation pursuant to Rule 7.31(s) where any unexecuted portion of the Cross-and-Post Order will be displayed in the Arca Book at the cross price.”

Accordingly, the Exchange proposes to delete the reference to PCXE Rule 7.31(s) in the current PCXE Rule 7.31(ff) text. In addition, minor changes are proposed for PCXE Rule 7.31(s) to make clear that any unexecuted portion of a basic Cross Order is cancelled.

Further, the Exchange proposes to amend PCXE Rule 7.31(bb), which defines the PNP Cross Order, and PCXE Rule 7.31(ff) to clarify that the Cross and Post functionality will be available for PNP Cross Orders. Currently, the unexecuted portion of any PNP Cross Order cancels as described in PCXE Rule 7.31(bb). The proposed rule change specifies that when Cross and Post functionality is applied to a PNP Cross Order, any unexecuted portion of the PNP Cross will post to the Arca Book if certain pricing conditions provided in the existing rule are met.<sup>9</sup> The Exchange believes that implementing these changes will provide investors and ETP Holders<sup>10</sup> with greater opportunities for executing orders with the Cross-and-Post functionality.

## **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>12</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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<sup>9</sup> See supra note 7.

<sup>10</sup> See PCXE Rule 1.1 (n).

<sup>11</sup> 15 U.S.C. 78f(b).

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

PCX has designated that the proposed rule change as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>14</sup>

The Exchange has stated that the foregoing 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) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest.<sup>15</sup> Therefore, the proposed rule change has become effective

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> See supra note 4.

<sup>14</sup> See supra note 5.

<sup>15</sup> Rule 19b-4(f)(6)(iii) under the Act also requires that a self-regulatory organization provide the Commission with written notice of its intent to file a proposed rule change, along with a brief description and text of the proposed rule change, at least five days prior to the date of filing the proposed rule change. The Exchange complied with this requirement.

pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.<sup>18</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 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 No. SR-PCX-2004-90 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 No. SR-PCX -2004-90. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments

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<sup>16</sup> See supra note 4.

<sup>17</sup> See supra note 5.

<sup>18</sup> See supra note 6.

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, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also 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 No. SR-PCX-2004-90 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

Margaret H. McFarland  
Deputy Secretary

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17 CFR 200.30-3(a)(12).