

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50356; File No. SR-PCX-2004-29)

September 13, 2004

Self-Regulatory Organizations; The Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Thereto to Amend the PCXE Minor Rule Plan and Recommended Fine Schedule to Add a Provision for Failure to Maintain Continuous, Two-Sided Q Orders in Those Securities in Which a PCXE Market Maker Is Registered to Trade

On April 14, 2004, the Pacific Exchange, Inc. (“PCX” or “Exchange”), through its wholly owned subsidiary, PCX Equities, Inc. (“PCXE”), 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 amend PCXE Rule 10.12 to add new provisions (g)(3) and (i)(3). These provisions amend the PCXE Minor Rule Plan (“MRP”) and Recommended Fine Schedule (“RFS”) to add to the MRP and RFS the failure to maintain continuous, two-sided Q orders in those securities in which a PCXE market maker is registered to trade.

On July 2, 2004, the PCX amended the proposed rule change.³ The Exchange again amended the proposed rule change on July 26, 2004.⁴ The proposed rule change, as modified by Amendment Nos. 1 and 2, was published for comment in the Federal

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Tania J.C. Blanford, Staff Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (“Division”), Commission, dated July 1, 2004 (“Amendment No. 1”). Amendment No. 1 completely replaced and superseded the original filing.

⁴ See letter from Tania J.C. Blanford, Staff Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated July 23, 2004 (“Amendment No. 2”). Amendment No. 2 replaced footnote 2 (on page 3 of Amendment No. 1) and footnote 4 (on page 8 of Amendment No. 1).

Register on August 9, 2004.⁵ The Commission received no comments on the proposal.

This order approves 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 The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁷ in that it is designed to promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal is consistent with Section 6(b)(6) of the Act,⁸ which requires that members and persons associated with members be appropriately disciplined for violations of Exchange rules. Finally, the Commission finds the proposal is consistent with Rule 19d-1(c)(2) under the Act,⁹ which governs minor rule violation plans.

In approving this proposal, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the MRP. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the

⁵ Securities Exchange Act Release No. 50131 (July 30, 2004), 69 FR 48266.

⁶ In approving this 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)(5)

⁸ 15 U.S.C. 78f(b)(6).

⁹ 17 CFR 240.19d-1(c)(2).

MRP provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the Exchange will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the MRP on a case by case basis, or if a violation requires formal disciplinary action.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-PCX-2004-29) be, and it hereby is, approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Jill M. Peterson
Assistant Secretary

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).