

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49664; File No. SR-PCX-2004-22)

May 6, 2004

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Pacific Exchange, Inc. and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Creating a New Order Type Entitled "Auto Q Order"

I. Introduction

On March 19, 2004, 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 regarding a new order type. On March 29, 2004, PCX submitted Amendment No. 1 to the proposal.³ The proposed rule change, as modified by Amendment No. 1, was published for notice and comment in the Federal Register on April 6, 2004.⁴ The Commission received no comment letters on the proposal. On May 5, 2004, the PCX submitted Amendment No. 2 to the proposal.⁵

This order approves the proposed rule change, as modified by Amendment No. 1. Simultaneously, the Commission provides notice of filing of Amendment No. 2 and grants accelerated approval of Amendment No. 2.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Mai S. Shiver, Acting Director and Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 26, 2004 ("Amendment No. 1"). Amendment No. 1 superseded and replaced the original rule filing in its entirety.

⁴ See Securities Exchange Act Release No. 45906 (March 30, 2004), 69 FR 18146.

⁵ See letter from Mai S. Shiver, Acting Director and Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 4, 2004 ("Amendment No. 2"). In Amendment No. 2, PCX revised the rule text to clarify that Auto Q Orders would

II. Description of the Proposed Rule Change

As part of its efforts to enhance participation on the Archipelago Exchange facility (“ArcaEx”), PCX proposes to amend its rules governing ArcaEx to implement a new functionality type that would enable Market Makers⁶ to automatically update their Q Orders.⁷ The Exchange proposes to add an automatic updating feature called “Auto Q” that would automatically repost a Q Order in the ArcaEx book, after an execution, at a designated increment inferior to the price at which it was originally posted and for the same amount of shares. The Auto Q Order would continue to repost in the ArcaEx book, after an execution, at the determined increment and size until the total tradable size threshold is reached.

When entering an Auto Q Order, a Market Maker would establish the following parameters: (i) price; (ii) size; (iii) buy or sell; (iv) increment update; and (v) total tradable size. Auto Q Orders will be governed by the price, time priority rules and order execution rules established in PCXE Rule 7.36. For example, superior priced displayed orders would be executed prior to Auto Q Orders and Auto Q Orders will not have precedence over same-priced displayed orders that are superior in time. Each reposted Auto Q Order would be assigned a new price, time priority as of the time of each reposting.⁸ Further, Auto Q Orders that are reposted at the same price as a non-displayed order would take precedence in accordance with PCXE Rule 7.36.

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⁶ PCXE Rule 1.1(u) defines Market Maker as an ETP Holder that acts as a Market Maker pursuant to PCXE Rule 7.

⁷ See PCXE Rule 7.31 (defining “Q Orders” as limit orders that are submitted to ArcaEx by Market Makers) and 7.34 (specifying Market Makers’ obligations to enter Q Orders).

⁸ See Amendment No. 2, supra note 5.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether it 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-2004-22 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-PCX-2004-22. 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, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of 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 Number SR-PCX-2004-22 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission Findings and Order Granting Accelerated Approval

After careful review, 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 exchange⁹ and the requirements of Section 6 of the Act.¹⁰ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act¹¹ in that the rule is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and to 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 believes that the Auto Q Order type may facilitate ArcaEx's market makers' compliance with their obligation to enter Q Orders. Further, the Commission notes that the application of the price time priority rules for each reposted Auto Q Order should prevent any unfair advantage for such orders vis-à-vis other order types. The Commission believes that the implementation of the Auto Q Order type may permit increased execution opportunities of Q Orders and promote a more efficient and effective market operation.

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. In determining to grant

⁹ The Commission has considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(5).

accelerated approval, the Commission notes that Amendment No. 2 merely codifies a technical aspect of the proposal that was published for public comment.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (File No. SR-PCX-2004-22), as amended by Amendment No. 1, be, and it hereby is, approved, and that Amendment No. 2 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland
Deputy Secretary

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).