

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49942; File No. SR-PCX-2004-12)

June 29, 2004

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the Pacific Exchange, Inc. Creating an Additional Processing Capability for PNP Orders Called “PNP Plus”

On February 23, 2004, the Pacific Exchange, Inc. (“PCX” or “Exchange”), through its wholly-owned subsidiary, PCX Equities, Inc., 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 the rules governing the Archipelago Exchange (“ArcaEx”) to create an additional processing capability for Post No Preference (“PNP”) Orders designated as PNP Plus. On April 23, 2004, PCX submitted Amendment No. 1 to the proposal.³ PCX submitted Amendments No. 2⁴ and 3⁵ on April 28, 2004 and May 11, 2004, respectively. The proposed rule change, as amended, was published for

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Steven B. Matlin, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (“Division”), Commission, dated April 22, 2004 (“Amendment No. 1”). Amendment No. 1 superseded and replaced the original rule filing in its entirety. In Amendment No. 1, the PCX changed the proposal to make PNP Plus Order election an order-by-order designation, made conforming and clarifying changes in the rule text, and provided an example of how a PNP Plus Order would be processed.

⁴ See letter from Steven B. Matlin, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 27, 2004 (“Amendment No. 2”). In Amendment No. 2, the PCX corrected typographical errors and made clarifying changes in the rule text.

⁵ See letter from Steven B. Matlin, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 10, 2004 (“Amendment No. 3”). In Amendment No. 3, the PCX made a clarifying edit to the rule text.

notice and comment in the Federal Register on May 24, 2004.⁶ The Commission received no comment letters 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 exchange⁷ and, in particular, the requirements of Section 6(b)(5) of the Act.⁸ Section 6(b)(5) requires, among other things, that the rules of an exchange be 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 perfect the mechanisms of a free and open market and national market system, and, in general, to protect investors and the public interest.

The Commission notes that the proposed rule change creates an additional processing capability for PNP Orders designated as PNP Plus. While an ordinary PNP Order is automatically cancelled in the event that such order locks or crosses the national best bid or offer (“NBBO”), a PNP Plus designation would avoid such cancellation in the event that the PNP Order would lock or cross the NBBO by re-pricing the PNP Order by one penny greater than the national best bid (for sell orders) or one penny lower than the national best offer (for buy orders) and posting the re-priced PNP Order in the ArcaEx Book. With each subsequent change in the NBBO, the PNP Order would continue to be re-priced and re-posted in this manner until such time that the original PNP Order price would not lock or cross the NBBO, at which time the PNP Order would revert to its original price. The Commission notes that such order would be

⁶ See Securities Exchange Act Release No. 49713 (May 17, 2004), 69 FR 29609.

⁷ 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).

⁸ 15 U.S.C. 78f(b)(5).

assigned a new price time priority as of the time of each re-posting in the ArcaEx Book. The Commission believes that the PNP Plus designation should extend additional flexibility to PNP Orders and that it should provide ETP Holders and Sponsored Participants with enhanced trading options. Further, the Commission believes that the proposed rule change should help improve the efficiency of order interaction on ArcaEx by increasing the opportunity for PNP Orders to execute, while avoiding locked and crossed markets. Therefore, the Commission finds that the proposed rule change, as amended, is consistent with the Act.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-PCX-2004-12), as amended by Amendment Nos. 1, 2, and 3, be, and hereby is, approved.

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

Margaret H. McFarland
Deputy Secretary

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).