

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50430; File No. SR-PCX-2004-78)

September 23, 2004

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving a Proposed Rule Change Relating to Priority and Order Allocation Procedures for PCX Plus

On August 10, 2004, the Pacific Exchange, Inc. (“PCX”) 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 PCX Rule 6.76 (Priority and Allocation Procedures of PCX Plus) to eliminate the requirement that inbound marketable Broker Dealer orders route to Floor Broker Hand Held Terminals in some trading scenarios in lieu of receiving immediate electronic executions and to eliminate Electronic Book Execution pursuant to PCX Rule 6.76(b)(4). The proposed rule change was published for comment in the Federal Register on August 19, 2004.³ The Commission received no comments on the proposal.

The Exchange proposes to amend PCX Rule 6.76 to allow Firm and Non-OTP Holder Market Maker⁴ orders to immediately execute on PCX Plus. The PCX also proposes to remove the restrictions on an order entered by a Firm or Non-OTP Holder or OTP Firm Market Maker less than one minute before the inbound order. In addition, the Exchange proposes to eliminate the 40% participation limitation currently placed on a

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 50191 (August 13, 2004), 69 FR 51504.

⁴ The term “Non-OTP Holder Market Maker” includes, but is not limited to, specialists, designated primary market makers, lead market makers, market makers, registered options traders, primary market makers and competitive market makers registered on an exchange other than the PCX. See PCX Rule 6.1(b)(35).

Firm, Non-OTP Holder or OTP Firm Market Maker for an inbound order that is not entirely filled. Finally, the PCX proposes to eliminate the Electronic Book Execution rules set forth in PCX Rule 6.76(b)(4) that prevent PCX Market Makers from immediately executing orders against the Consolidated Book.

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 exchange⁵ and, in particular, the requirements of Section 6(b) of the Act⁶ and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁷ which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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.

Specifically, the Commission finds that, in eliminating restrictions which prevent Firm and Non-OTP Market Maker orders from immediately executing, the proposed rule changes should provide greater efficiencies in the marketplace. In particular, the Commission believes that allowing PCX Market Makers to immediately execute against the Consolidated Book by eliminating the Electronic Book Execution rules of PCX Rule 6.76.(b)(4) should improve the speed of executions at the PCX.

⁵ 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).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (File No. SR-PCX-2004-78) be, and hereby is, approved.

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

Margaret H. McFarland
Deputy Secretary

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).