

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50460; File No. SR-PCX-2004-77)

September 28, 2004

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto to Clarify Routing Away Practices

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 30, 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”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. On September 1, 2004, the PCX filed Amendment No. 1 to the proposed rule change.⁵ The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 204.19b-4(f)(6).

⁵ See letter from Mai S. Shiver, Director, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 31, 2004. Amendment No. 1 replaced the proposed rule change in its entirety. For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on September 1, 2004, the date the PCX filed Amendment No. 1.

The Exchange proposes to amend PCXE Rule 7.37 (“Order Execution”), which governs the Archipelago Exchange (“ArcaEx”), an equities trading facility of PCXE, to apply the restriction on the size of an order routed outside ArcaEx only to Intermarket Trading System “ITS” Eligible Listed securities, and not to over-the-counter “OTC” securities. The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.

* * * * *

Rule 7

Equities Trading

Order Execution

* * * * *

Rule 7.37. (a) – (c) No change.

(d) Step 5: Routing Away.

(1) – (2) – No change.

(A) (i) The order shall be routed, either in its entirety or as component orders, to another market center or market participant as a limit order;

(a) for ITS Eligible Listed Securities - equal to the price and no greater than the size of the quote published by the market center or market participant[.]; and

(b) for OTC securities - equal to the price of the quote published by the market center or market participant.

The remaining portion of the order, if any, shall be ranked and displayed in the Arca Book in accordance with the terms of such order under Rule 7.36 and such order shall be eligible for execution under Rule 7.37.

(ii) – No change.

(B) – (E) – No change.

* * * * *

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 PCX 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 PCX 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

The Commission recently approved a rule change to PCXE Rule 7.37 that clarified ArcaEx’s execution rules related to routing to away markets.⁶ Specifically, the rule change amended PCXE Rule 7.37(d)(2)(A) to require that the size of orders routed outside of ArcaEx to another market center or market participant be no greater than the size of the quote published by that away market center or market participant. According to the PCX, this restriction is consistent with Section 6(b)(iii) of the ITS Plan and as a result, the Exchange proposes to clarify that the restriction only applies to ITS Eligible Securities.

⁶ See Securities Exchange Act Release No. 48934 (December 16, 2003), 68 FR 74690 (December 24, 2003) (File No. SR-PCX-2003-54).

The Exchange does not believe that PCXE Rule 7.37 should apply to OTC securities as there is no intermarket linkage plan for OTC securities that places restrictions on the size of orders routed to an outside market center or market participant. The Exchange further believes this clarification is necessary in light of the prevalence of reserve orders in the OTC market in which the size available for execution is greater than the displayed quote size. By routing away an order of a size greater than the displayed quote on the outside market, ArcaEx may be able to fill larger orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)⁷ of the Act, in general, and further the objectives of Section 6(b)(5),⁸ in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market, and to protect investors and the public interest. In addition, the Exchange believes the proposed rule is consistent with provision of Section 11A(a)(1)(B) of the Act,⁹ which states that new data processing and communications techniques create the opportunity for more efficient and effective market operations.

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.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78k-1(a)(1)(B).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such

shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 30-day operative delay to implement the proposed rule change. The PCX contends that these proposed rules are non-controversial as the Exchange is seeking to clarify its rules to conform to current practices for OTC securities. As a result, the Exchange believes that the proposed rule change does not raise any new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition for the

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

proposed rule change to become immediately operative upon filing. The Commission believes that waiving the 30-day operative period is consistent with the protection of investors and the public interest and, therefore, has determined to allow the proposed rule change to become effective and operative as of the date of the filing with the Commission.¹²

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>);
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2004-77 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-2004-77. 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

¹² For purposes of waiving the operative period date of this proposal only, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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 Room. Copies of the filing also will 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 Number SR-PCX-2004-77 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.¹³

Margaret H. McFarland
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).