

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49835; File No. SR-PCX-2004-52)

June 8, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Pacific Exchange, Inc. Relating to Preventing Locks and Crosses in PNP Orders for ITS Trade-Through Exempt Securities by Amending PCXE Rule 7.31

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 June 3, 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) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice 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

The Exchange is proposing to amend PCXE Rule 7.31 (“Orders and Modifiers”), which governs the Archipelago Exchange (“ArcaEx”), an equities trading facility of PCXE, by modifying the behavior of PNP Orders for ITS Trade-Through Exempt Securities⁵ to systematically prevent such orders from locking and crossing the National Best Bid or

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 204.19b-4(f)(6).

⁵ See PCXE Rule 7.37 for the definition of “ITS Trade-Through Exempt Securities.”

Offer (“NBBO”). The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.

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Rule 7

Equities Trading

Trading Sessions

Rule 7.31(a) – (v) – No change.

(w) PNP Order (Post No Preference). A limit order to buy or sell that is to be executed in whole or in part on the Corporation, and the portion not so executed is to be ranked in the Arca Book, without routing any portion of the order to another market center; provided, however, the Corporation shall cancel a PNP Order that would lock or cross the NBBO except as provided in Rule 7.31(w)(1). The NBBO price protection provision set forth in Rule 7.37 will not apply to PNP Orders in Nasdaq securities.

(1) PNP Orders for ITS Trade-Through Exempt Securities (as defined in Rule 7.37). PNP Orders for ITS Trade-Through Exempt Securities [(as defined in Rule 7.37)] will not be canceled at the time of order entry if such orders would lock or cross the NBBO. Such orders will be ranked in the Arca Book in price, time priority with an undisplayed price and size until: (i) such orders are executed; or (ii) such orders no longer lock or cross the NBBO at which time they would be displayed in the Arca Book and ranked based upon original price and the original order entry time. The lock and cross restrictions set forth in this rule will only apply to bids or offers

included in the NBBO that are for greater than 100 shares pursuant to Rule 7.56(d)(2)(E). PNP Orders in ITS Trade-Through Exempt Securities may be executed at a price no more than three cents (\$0.03) away from the NBBO [displayed in the Consolidated Quote]. All PNP Orders whether displayed or undisplayed will execute in price, time priority. [The NBBO price protection provision set forth in Rule 7.37 will not apply to PNP Orders in Nasdaq securities.]

(x) – (cc) – No change.

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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 Exchange 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 Exchange 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

Currently, PCXE Rule 7.31(w) establishes that PNP Orders for ITS Trade-Through Exempt Securities will not be canceled at the time of order entry if the PNP Order would lock or cross the NBBO. The Exchange seeks to modify the rule to provide that PNP Orders in ITS Trade-Through Exempt Securities will not be displayed in the instance when the order will lock or cross the NBBO. In such cases, the PNP Orders would remain in the

Arca Book ranked in price, time priority but will not be displayed until the order: (i) is executed; or (ii) no longer locks or crosses the NBBO at which time they would be displayed in the Arca Book and ranked based upon the original price and the original order entry time.

Pursuant to PCXE Rule 7.56(d)(2)(E), the lock/cross restrictions do not apply to 100 share markets. Thus, this proposed rule change regarding the display of PNP Orders in ITS Trade-Through Exempt Securities will apply only to bids and offers of more than 100 shares. Therefore, if the PNP Order would lock or cross a bid or offer of 100 shares, the Exchange would display the PNP Order in the Arca Book in price, time priority.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)⁶ of the Act, in general, and further the objectives of Section 6(b)(5),⁷ 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, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with provisions of Section 11A(a)(1)(B)⁸ of the Act, 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

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78k-1(a)(1)(B).

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.

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 Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ 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 period to implement the proposed rule change as soon as the technical changes are completed. The Commission believes that waiving the 30-day operative period is

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

consistent with the protection of investors and the public interest because it will allow the PCX to immediately provide a mechanism to prevent Locks and Crosses in trading certain ITS securities, consistent with the ITS Plan.¹¹

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-2004-52 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-2004-52. 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

¹¹ 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).

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-2004-52 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.¹²

Margaret H. McFarland
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).