

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50579; File No. SR-PCX-2004-97)

October 21, 2004

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to an Amendment to the Automatic Opening Rotations Pilot Program

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 October 14, 2004, the Pacific Exchange, Inc. (“PCX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal, on an accelerated basis, for an additional six-month pilot expiring on March 31, 2005.

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

PCX proposes amending PCX Rule 6.64, Commentary .03 to extend its Automated Opening Rotation (“AOR”) pilot program for six months. The text of the proposed rule change is available at PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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

¹ 15 U.S.C. 78s(b)(1).

the places specified in Item III 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

On September 30, 1999, the Commission approved a one-year pilot program for the operation of the Exchange's AOR System.³ On August 21, 2000,⁴ August 13, 2001,⁵ June 10, 2002,⁶ and August 13, 2003,⁷ the Commission granted one-year extensions to the pilot program. The latest pilot program extension expired on September 30, 2004. The Exchange proposes to extend the AOR pilot program for an additional six months, retroactive from September 30, 2004 until March 31, 2005.

AOR provides a procedure to facilitate the execution of option orders at the opening by providing an electronic means of establishing a single price opening. The Exchange is requesting an additional extension of the AOR pilot program for six months,

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 41970 (September 30, 1999), 64 FR 54713 (October 7, 1999) and Securities Exchange Act Release No. 41824 (September 1, 1999), 64 FR 49263 (September 10, 1999).

⁴ See Securities Exchange Act Release No. 43187 (August 21, 2000), 65 FR 52464 (August 29, 2000).

⁵ See Securities Exchange Act Release No. 44688 (August 13, 2001), 66 FR 43600 (August 20, 2001).

⁶ See Securities Exchange Act Release No. 46055 (June 10, 2002), 67 FR 41288 (June 17, 2002).

⁷ See Securities Exchange Act Release No. 48333 (August 13, 2003), 68 FR 50205 (August 20, 2003).

to March 31, 2005. The added time permits the Exchange to phase-in the Exchange's new trading platform for options, "PCX Plus," on an issue-by-issue basis.⁸ As each issue is phased into PCX Plus, the Exchange will simultaneously phase-out such issue from the current AOR process. PCX Plus will eventually replace the AOR process in its entirety.⁹ Hence, the Exchange will not be seeking permanent approval of the AOR pilot program.¹⁰ Currently, the AOR pilot program is operating successfully and without any problems. Therefore, the Exchange believes that an extension of the pilot program is warranted.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)¹¹ of the Act, in general, and furthers the objectives of Section 6(b)(5),¹² in particular, in that it is designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

⁸ See Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (Order approving PCX Plus).

⁹ The PCX represents that it will file a rule proposal to eliminate the AOR pilot program rule text in Rule 6.64(c) and Commentary .03 if the PCX Plus transition is completed before March 31, 2005.

¹⁰ The PCX Plus implementation began, gradually on an issue-by-issue basis, on December 15, 2003, and is anticipated to become completely operative by December 31, 2004. The Exchange will not be seeking an additional extension of its AOR pilot program provided that the PCX Plus implementation is completed without significant delay.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

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.

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

Written comments on the proposed rule change were neither solicited nor received.

III. 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>); or
- Send E-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2004-97 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-2004-97. 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 the Exchange. 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-2004-97 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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 exchange.¹³ In particular, the Commission finds that the proposed rule change

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In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

is consistent with Section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.¹⁴ The Commission believes that an extension of the pilot program for an additional six months should allow the Exchange to gradually phase-out the AOR process and to continue to phase-in PCX Plus on an issue-by-issue basis.

Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁵ for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. The Commission recognizes that during the last extension of the pilot program, PCX has represented that the AOR pilot program has been operating successfully. The Commission believes that granting accelerated approval to extend the pilot program for an additional six months will allow PCX to continue, without interruption, the existing operation of its AOR pilot.

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (SR-PCX-2004-97), is hereby approved on an accelerated basis, as a six-month pilot, scheduled to expire on March 31, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

J. Lynn Taylor
Assistant Secretary

¹⁶ Id.

¹⁷ 17 CFR 200.30-3(a)(12).

