

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50645; File No. SR-PCX-2004-59)

November 5, 2004

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Pacific Exchange, Inc. Relating to a New Order Modifier Entitled "Proactive if Locked Reserve"

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 July 1, 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 PCX. On October 26, 2004, the PCX submitted Amendment No. 1 to the proposed rule change.³ On October 28, 2004, the PCX submitted Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The PCX proposes to amend its rules governing the Archipelago Exchange

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Steven B. Matlin, Senior Counsel, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 25, 2004 and accompanying Form 19b-4 ("Amendment No. 1"). Amendment No. 1 replaced and superceded the originally filed proposed rule change.

⁴ See letter from Steven B. Matlin, Senior Counsel, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated October 25, 2004 ("Amendment No. 2"). Amendment No. 2 made technical corrections to the proposed rule text of the proposed rule change, as amended.

("ArcaEx"), the equities trading facility of PCXE, by adding new processing capability for ArcaEx Reserve Orders in situations where a Reserve Order in an exchange-listed security is locked by another market. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in [brackets].

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Rule 7

Equities Trading

Orders and Modifiers

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Rule 7.31 Orders and Modifiers

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(hh) Proactive if Locked Reserve. A Reserve Order that will route to another market center pursuant to PCXE Rule 7.37(d) for the away market's displayed size up to such reserve amount in the instance in which the other market center has locked the order and the locking market has not resolved the locked market situation in a timely manner based upon average response times from ITS Participants. In the event that the order routed from the Archipelago Exchange to the other market center is not executed in its entirety, the Archipelago Exchange shall post the order or portion thereof in the ArcaEx Book. Proactive if Locked Reserve will apply only to exchange-listed securities.

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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, as amended, 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

The PCX states that, as part of its continuing efforts to enhance participation on the ArcaEx facility, it is proposing to include additional processing capability for ArcaEx Reserve Orders in exchange-listed securities. The new order modifier would be entitled "Proactive if Locked Reserve" and would be utilized when a Reserve Order in an exchange-listed security is locked by another market and the offending market has not shipped a commitment or moved their quote to clear the lock.

Currently, PCXE Rule 7.56 describes interaction between markets in exchange-listed securities when an order in the ArcaEx Book is locked by an away market. Specifically, the ITS Plan and the provisions of this rule require that, in locked market situations, upon receiving a locked market complaint, the offending market shall either ship a commitment to trade to the market that was locked or move its quote so as to unlock the market.⁵ The Exchange states that, in many cases, however, away markets that lock or cross ArcaEx do not adequately respond to complaints or do not move quotes to unlock or uncross the market.

The proposed Proactive if Locked Reserve order modifier is designed to address this issue.

Under the proposed rule change, Equity Trading Permit Holders ("ETP Holders") using the Proactive if Locked Reserve modifier would be able to request, for exchange-listed securities, that the away market's displayed size up to the reserve amount for a Reserve Order⁶ be shipped to an away market when the Reserve Order has been locked (or crossed) by the away market and there has been no resolution of the locked (or crossed) market by the offending away market. According to the Exchange, if the away market does not promptly respond to a locked market complaint as provided for under the ITS Plan, ArcaEx would proactively ship commitments to the offending market under the Proactive if Locked Reserve process.⁷

For example, assume ArcaEx posts a Reserve order with a Proactive if Locked Reserve Modifier for 50,000 Buy at 30.10, with 1,000 shares displayed and 49,000 shares in reserve. An away market subsequently locks this quote by offering 10,000 shares at 30.10. ArcaEx would first send an ITS complaint to the offending away market, indicating that the away market has locked a quote on ArcaEx. ArcaEx would simultaneously begin to monitor the time elapsing before receiving a response to its complaint. If the away market does not respond within a sufficient amount of time based upon average response times from ITS Participants, ArcaEx would ship 10,000 shares of the 49,000 shares in reserve to the away market (i.e., the away market's displayed quote) from the ArcaEx Reserve order at 30.10. In the above example, ArcaEx would ship as many shares as it had in reserve for the order with

⁵ See ITS Plan Exhibit B, Section (d).

⁶ Reserve Orders, defined in PCXE Rule 7.31, are limit orders with a portion of the size displayed and with a reserve portion of the size not displayed.

a Proactive if Locked Reserve Modifier to match the away market's displayed quote.

Accordingly, if the away market was offering 50,000 shares at 30.10 instead of 10,000 shares, ArcaEx would ship all 49,000 shares in the Reserve order while keeping the 1,000 shares displayed.

The proposed Proactive if Locked Reserve modifier is utilized only if the offending market does not respond to the ArcaEx ITS complaint within an acceptable time period, based upon average response times from ITS Participants. If the away market declines the ArcaEx commitment, ArcaEx would post the declined total back to the Reserve order,⁸ for example, showing 1,000 shares Buy at 30.10 with a reserve amount of 49,000 shares. If the order is executed by the away market, and ArcaEx remains locked (or crossed), ArcaEx would ship the away market's display amount from the reserve portion of the Reserve Order to the offending market again, until the order is depleted. The display portion of the Reserve Order, however, will continue to be displayed and will not ship to the away market.

Furthermore, in the instance where a limit order in the Arca Book that is at the same price as, but superior in time to, the Proactive if Locked Reserve Order is locked by an away market, ArcaEx would follow the aforementioned procedures. Specifically, ArcaEx would first send an ITS complaint to the offending away market indicating that the away market locked the ArcaEx limit order. If the away market does not respond within a sufficient

⁷ See ITS Plan Exhibit B, Section (d).

⁸ The Exchange states that any portion of an order which is sent to an away market and declined would re-enter ArcaEx as part of the original Reserve Order with its original time priority in accordance with PCXE Rule 7.36. To the extent the Reserve Order is executed in its entirety in the interim, the portion of the order that was sent to an away market and declined would establish a new time priority upon re-posting in the Arca Book pursuant to PCXE Rule 7.36.

amount of time based upon average response times from ITS Participants, ArcaEx would ship from the Proactive if Locked Reserve Order the away market's displayed size up to the reserve amount. The limit order and display portion of the Proactive if Locked Reserve Order would continue to be displayed. Any portion of the Proactive if Locked Reserve Order that is sent to the away market and subsequently declined would be re-posted in the Arca Book pursuant to the description above.

The PCX believes that the proactive shipping of commitments facilitated by the proposed Proactive if Locked Reserve modifier will mitigate locked or crossed markets, prevent unresponsive away markets from delaying executions, and provide increased opportunities for executing orders. The Exchange believes that the Proactive if Locked Reserve modifier will therefore aid enhanced order interaction and foster price competition. The PCX believes that the proposal also promotes a more efficient and effective market operation, and enhances the investment choices available to investors over a broad range of trading scenarios.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁰ 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 and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

⁹ 15 U.S.C. 78f(b).

¹⁰ 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve such proposed rule change; or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2004-59 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-2004-59. 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 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-2004-59 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.¹¹

Margaret H. McFarland
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).