

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50868; File No. SR-PCX-2004-59)

December 16, 2004

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

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"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend its rules governing the Archipelago Exchange ("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. On October 26, 2004, the PCX submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On October 28, 2004, the PCX submitted Amendment No. 2 to the proposed rule change.<sup>4</sup> The proposed rule change, as amended, was published for comment in the

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 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 Amendment No. 1 replaced and superseded the originally filed proposed rule change.

<sup>4</sup> 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.

Federal Register on November 15, 2004.<sup>5</sup> The Commission received no comments on the proposal.

The Exchange proposes to add a new order modifier entitled "Proactive if Locked Reserve" as an additional processing capability for ArcaEx Reserve Orders<sup>6</sup> in exchange-listed securities. An Equity Trading Permit Holder ("ETP Holder") could use this new order modifier when its Reserve Order in an exchange-listed security is locked by another market and that market has not shipped a commitment or moved its quote to clear the lock. The Proactive if Locked Reserve modifier would allow an ETP Holder to instruct ArcaEx to ship its Reserve Order to an away market when the Reserve Order has been locked (or crossed) by the away market and the offending away market has not resolved the lock (or cross) in a timely manner. Under the proposal, if the away market does not respond to a locked market complaint as provided for under the ITS Plan within an acceptable time period based on average responses from ITS participants, ArcaEx would proactively route an order to the offending market for the away market's displayed size up to the reserve amount of such order.<sup>7</sup>

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 exchange<sup>8</sup> and, in particular, the requirements of

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<sup>5</sup> See Securities Exchange Act Release No. 50645 (November 5, 2004), 69 FR 65670.

<sup>6</sup> 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.

<sup>7</sup> See ITS Plan Exhibit B, Section (d).

<sup>8</sup> 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).

Section 6(b) of the Act<sup>9</sup> and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>10</sup> 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 believes that, in providing a method for ETP Holders to proactively unlock or uncross markets and execute their orders while working within the requirements of the ITS Plan, the proposed rule change, as amended, should provide greater efficiencies in the marketplace by giving ArcaEx participants increased opportunities for executing orders. In particular, the Commission believes that allowing ArcaEx participants to utilize this order modifier may enhance order interaction and foster price competition.

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (File No. SR-PCX-2004-59), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 17 CFR 200.30-3(a)(12).