

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51125; File No. SR-PCX-2005-15)

February 2, 2005

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Primary Only Orders

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 February 1, 2005, the Pacific Exchange, Inc. (“PCX” or “Exchange”) 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. 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 PCX, through its wholly-owned subsidiary PCX Equities, Inc. (“PCXE”), proposes to amend its PCXE Rule 7.31(x) to provide that the Primary Only Order (“PO Order”) may apply to Nasdaq securities traded on the Archipelago Exchange (“ArcaEx”) facility, and may be either market or limit orders. The text of the proposed rule change is available on the PCX’s Web site (www.pacificex.com), at the PCX’s Office of the Secretary, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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. 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

As part of its continuing efforts to enhance participation on the ArcaEx facility, the PCX is proposing to amend PCXE Rule 7.31(x) to clarify that PO Orders may also apply to Nasdaq securities, and may be either market or limit orders.

Currently, PCXE Rule 7.31(x) defines PO Orders as market orders that are routed to the primary market, and applies only to exchange-listed securities.³ ArcaEx proposes to expand the PO Order functionality to include Nasdaq securities and modify Rule 7.31(x) accordingly. As such, the Exchange proposes to delete the language in PCXE Rule 7.31(x), which limits the PO Order functionality to exchange-listed securities only and proposes minor changes to indicate that PO Orders may be either market or limit orders. Further, PO market orders in Nasdaq securities received prior to 6:28 a.m. PT will be marked “OO” (On-Open⁴) and will be routed to Nasdaq for possible participation in Nasdaq’s Opening Cross. The unexecuted shares that are

³ The Exchange currently interprets and will continue to interpret under this proposal the term “primary market” as the market which has the authority to declare a regulatory halt.

⁴ “On-Open” or “OO” is a marking recognized by the Nasdaq stock market as an order type executable only during Nasdaq’s Opening Cross. Further, market orders sent with an “OO” designator are treated as market on-open orders by Nasdaq.

sent back to ArcaEx after the Market Order Auction⁵ will be processed as regular market orders in the Core Session as described in PCXE Rule 7.37. Any PO market orders marked OO that are sent back to ArcaEx before ArcaEx conducts the Market Order Auction will be cancelled back to the customer.

The Exchange believes that implementing these changes will provide investors and ETP Holders⁶ with greater opportunities for executing orders on the opening. Further, the Exchange believes that the proposal is merely a minor technical change to the existing PO Order type to enable this functionality for Nasdaq securities and to expand its applicability to limit orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals 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 a national market system.

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.

⁵ See PCXE Rule 7.35.

⁶ See PCXE Rule 1.1(n).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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 the proposed modifications, 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-2005-15 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-2005-15. 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-2005-15 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.⁹

Margaret H. McFarland
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).