

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51972; File No. SR-PCX-2005-84)

July 5, 2005

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trading Securities in Subpenny Increments

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 30, 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 and II below, which Items have substantially been prepared by the Exchange. The Exchange has filed this proposal pursuant to Section 19(b)(3)(A) of the Act³ 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, through its wholly owned subsidiary PCX Equities, Inc. (“PCXE”), is proposing to amend the interpretation to PCXE Rule 7.6(a) to reflect the anticipated extension of a Commission exemption that permits securities transactions to be entered, executed, and reported in subpenny increments, although such quotations are

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 240.19b-4(f)(6).

disseminated in rounded, penny increments without a rounding identifier. The text of the proposed rule change is available on the PCX Web site (www.pacificex.com), at the Exchange's principal office, and at the Commission's Public Reference Room.

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 III below. The self-regulatory organization 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 Commission previously granted PCX an exemption from Rules 11Ac1-1, 11Ac1-2, and 11Ac1-4 under the Act⁵ with respect to securities priced less than \$1.00 per share that permits Archipelago Exchange, a facility of PCX (“ArcaEx”), electronic trading permit (“ETP”) holders of ArcaEx, and vendors that distribute ArcaEx quotation information to enter, execute, and report quotations in exchange-listed, Nasdaq National Market, and SmallCap securities in increments less than \$0.01 per share, although such quotations are disseminated in rounded, penny increments without a rounding identifier.⁶

⁵ 17 CFR 240.11Ac1-1, 240.11Ac1-2, and 11Ac1-4.

⁶ See Letter from David S. Shillman, Associate Director, Division of Market Regulation, Commission, to Mai S. Shiver, Director of Regulatory Policy, PCX, dated September 24, 2004.

In conjunction with the initial grant of this exemption, the Exchange modified Interpretation .05 to PCXE Rule 7.6(a) on a pilot basis to reflect a subpenny minimum price variation for securities priced less than \$1.00. That pilot rule is operative until September 30, 2005.⁷ Subsequently, the Exchange requested the Commission to extend the exemption to permit the Exchange to accept and execute orders and quotations of all exchange-listed, National Market, and SmallCap securities in increments less than \$0.01 per share, although such quotations are disseminated in rounded, penny increments without a rounding identifier.⁸ That exemption expires on June 30, 2005.⁹ PCX has requested the Commission, in a separate letter, to extend this exemption until the effective date of Rule 612 of Regulation NMS.¹⁰ With this filing, the Exchange is amending Interpretation .05 to PCXE Rule 7.6(a) to reflect the anticipated extension of this Commission exemption.¹¹

2. Statutory Basis

⁷ See Securities Exchange Act Release No. 50441 (September 24, 2004), 69 FR 58570 (September 30, 2004).

⁸ See Letter from David S. Shillman, Associate Director, Division, Commission, to Mai S. Shiver, Director of Regulatory Policy, PCX, dated February 10, 2005.

⁹ See id.

¹⁰ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (Regulation NMS adopting release). Rule 612, which governs sub-penny quotations, will become effective on August 29, 2005.

¹¹ The Commission notes that it has granted the Exchange the extension it requested. See Letter to Alden Adkins, Chief Regulatory Officer, PCX, from Annette L. Nazareth, Director, Division, Commission, dated July 1, 2005.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5),¹³ in particular, in that 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 and perfect the mechanisms of a free and open market, and to protect investors and the public interest.

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

The Exchange asserts that the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder¹⁵ because the rule change does not:

- (i) significantly affect the protection of investors or the public interest;

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

(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.¹⁶ The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change effective immediately.

The Commission hereby grants the request.¹⁷ The Commission believes that such waiver is consistent with the protection of investors and the public interest because the sole purpose of the rule change is to accurately reflect the new expiration date of a Commission exemption.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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.

¹⁶ In addition, Rule 19b-4(f)(6)(iii) states that the Exchange must provide the Commission with written notice of its intent to file the proposed rule change at least five days prior to the date of filing of the proposed rule change. The Commission has determined to waive the requirement in this case.

¹⁷ For purposes only of accelerating the operative date of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 No. SR-PCX-2005-84 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File No. SR-PCX-2005-84. 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 changes 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of 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 No. SR-PCX-2005-84 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.¹⁸

Jill M. Peterson
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).