

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52109; File No. SR-PCX-2005-72)

July 22, 2005

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Q Orders

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> notice is hereby given that on June 7, 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 been prepared by the Exchange. On July 6, 2005, the Exchange amended the proposed rule change (“Amendment No. 1”).<sup>3</sup> The Exchange has designated the proposed rule change as “non-controversial” under Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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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> In Amendment No. 1, the Exchange inserted the Statutory Basis section, which had been inadvertently omitted, and corrected the language set forth in Item III. The effective date of the original proposed rule change is June 7, 2005, and the effective date of the amendment is July 6, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on July 6, 2005, the date on which the PCX submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

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"), proposes to amend its rules governing the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE. With this filing, the Exchange proposes to modify its Q Order definition. The text of the proposed rule change is set forth below. Proposed new language is in italics; proposed deletions are in [brackets].

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Rule 7

Equities Trading

Orders and Modifiers

Rule 7.31 (a) – (j) – No Change.

(k) Q Order

(1) A Q Order is a limit order submitted to the Archipelago Exchange by a Market Maker.

(A) A Market Maker may instruct the Archipelago Exchange before 6:28 am (Pacific Time) to enter a Q Order on their behalf as follows:

(1) At the last price and size entered by the Market Maker during the previous trading day, either including or excluding reserve size;

(2) At a specified percentage from the best bid or offer;

(3) At the standard Q defined as \$0.01 bid and 2 times the previous day's close for the offer with specified display and reserve sizes.

Upon execution, the Q Order entered pursuant to the above instructions will automatically repost with the original size and \$10 below the original bid or \$10 above the original offer, but never below \$0.01.

Rule 7.31(k)(2) – (h)(h) – No Change.

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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 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 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 modify its Q Order definition. In particular, the Exchange seeks to provide Market Makers with the option to instruct ArcaEx to submit a Q Order on their behalf.

Currently, PCXE Rule 7.31(k) describes Q Orders as a limit order submitted to the Exchange by a Market Maker. As part of their Market Maker obligations, pursuant to PCXE Rule 7.23, Market Makers are required to maintain continuous, two-sided Q Orders in the securities in which the Market Maker is registered to trade. In order to assist the Market Makers with this obligation, the Exchange proposes to offer functionality in which the Market Makers could choose to have the Exchange enter and maintain a Q Order on their behalf. At 6:28 am Pacific Time, the Exchange would extract information submitted by the Market Maker that provides specific quote instructions for the Exchange to enter a quote on the Market Maker's

behalf. Specifically, the Market Maker would instruct ArcaEx to enter a Q Order based on one of the following options:

- (1) At the last price and size entered by the Market Maker during the previous trading day, either including or excluding reserve size;
- (2) At a specified percentage from the best bid or offer; or
- (3) At the standard Q defined as \$0.01 bid and 2 times the previous day's close for the offer with specified display and reserve sizes.

Conversely, the Market Maker could choose to enter their own Q Order, or request that their previous day's Q Order be canceled. In addition, upon execution of the Q Order that was entered according to one of the aforementioned options, the Exchange would automatically repost the Q Order with the original size and \$10 below the original bid or above the original offer, but never below \$0.01. Lastly, in an instance of a bulk cancel, the Exchange would not automatically cancel Q orders.

The proposed rule change would be similar to Nasdaq Stock Market rules that were recently published in the Federal Register for immediate effectiveness.<sup>6</sup> In particular, Nasdaq proposed functionality for Nasdaq Quoting Market Participants to instruct Nasdaq to open their quotes based on a variety of choices.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is

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<sup>6</sup> See Securities Exchange Act Release No. 51522 (April 11, 2005), 70 FR 20955 (April 22, 2005) (SR-NASD-2005-050).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition 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 inappropriate 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

Because the foregoing proposed rule change does not:

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

(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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> The PCX has requested that the Commission waive the 30-day operative delay for “non-controversial” proposals because the proposed rule change is similar to rules in effect on the Nasdaq Stock Market. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). The Commission notes that PCX provided written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change.

proposal would allow the PCX to offer market makers a means by which to manage their Q Orders. In addition, the proposal would introduce a functionality that is similar to one in effect on The Nasdaq Stock Market. For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>11</sup>

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.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-PCX-2005-72 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 20549-9309.

All submissions should refer to File Number SR-PCX-2005-72. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>11</sup> For purposes only of waiving the 30-day operative delay of the proposed rule change, the Commission considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 Room. Copies of the 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-2005-72 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.<sup>12</sup>

Margaret H. McFarland  
Deputy Secretary

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