

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52253; File No. SR-PCX-2005-16)

August 15, 2005

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto to Amend its Market Data Rebate Program to Allow Equity Trading Permit Holders to Receive Rebates on an Estimated Basis

On February 1, 2005, the Pacific Exchange, Inc. (“PCX”), 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”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its current market data rebate program to allow Equity Trading Permit Holders (“ETP Holders”) to receive market data rebates on an estimated basis when certain conditions are met. On July 5, 2005, PCX amended the proposed rule change.³ The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on July 14, 2005.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

Currently, the rules governing the Archipelago Exchange (“ArcaEx”), the equities trading facility of PCXE, allow ETP Holders to receive Liquidity Provider Credit payments on a quarterly basis for limit orders posted by such ETP Holder in Tape B

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Amendment No. 1. In Amendment No. 1, PCX amended the purpose section of the filing to include examples of how estimated market data rebates would be calculated and how estimated market data rebates would be distributed.

⁴ See Securities Exchange Act Release No. 51990 (July 7, 2005), 70 FR 40770.

securities⁵ that execute against inbound marketable orders. Under the current market data revenue program the Liquidity Provider Credit applied to ETP Holders for limit orders in Tape B securities that execute against inbound marketable orders is 50% of the revenue from the Consolidated Tape Association (“CTA”) Plan generated for such trades.

The Commission finds that PCX’s proposal to pay eligible ETP Holders an estimated share of Liquidity Provider Credits on a monthly basis, before quarterly revenues from the CTA Plan are distributed, consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,⁷ which requires that the rules of the exchange be designed to prevent fraudulent and manipulative acts and practices, 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 to and perfect the mechanisms of a free and open market and a national market system. The PCX states that distributing estimated Liquidity Provider Credits on a monthly basis will make the pricing of executions on ArcaEx more competitive.

⁵ Tape B securities include securities that are on the American Stock Exchange or the regional national securities exchanges.

⁶ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

IT IS THERFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-PCX-2005-16), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland
Deputy Secretary

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).