

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53117; File No. SR-PCX-2005-87)

January 13, 2006

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change, and Amendment No. 1 Thereto, Relating to the Tracking Order Process

I. Introduction

On July 26, 2005, 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”)¹ and Rule 19b-4 thereunder,² a proposed rule change to replace the existing PCXE rules describing its current tracking order process (“Tracking Order Process”)³ with new provisions for the Tracking Order Process. The PCX filed Amendment No. 1 to the proposed rule change on November 22, 2005.⁴ The proposed rule change, as amended, was published for comment in the Federal Register on December 13, 2005.⁵ The Commission received no comments on the proposed rule change, as amended.

II. Description

The PCX proposes to amend its rules governing the Archipelago Exchange (“ArcaEx”), the equities trading facility of PCXE. Specifically, the Exchange proposes to restructure its Tracking Order Process by modifying the current rule text governing the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See PCXE Rule 7.37(c).

⁴ Amendment No. 1, which replaced the original filing in its entirety, made technical and clarifying changes to the proposed rule change.

⁵ See Exchange Act Release No. 52898 (Dec. 6, 2005), 70 FR 73811 (Dec. 13, 2005) (“Notice”).

Tracking Order Process⁶ to implement a process based on the submission of orders, rather than instructions, to be executed in price/time priority.⁷

PCX represents that the purpose of the Tracking Order Process is to provide a final opportunity for execution against any remaining liquidity on the ArcaEx system before routing to an away market center.⁸ Under the proposed rule change, as is currently the case, if an order submitted to the ArcaEx has not been executed in its entirety after progressing through ArcaEx's directed order, display order and working order processes,⁹ the order (or the remaining portion of the order) would enter the Tracking Order Process. An incoming order would be matched to Tracking Orders held in the Tracking Order Process based on the price and time the Tracking Order was received. Under the proposal, a "Tracking Order" is an undisplayed, priced round lot order that is eligible for execution in the Tracking Order Process against an order equal to or less than the aggregate size of Tracking Order interest available at that price.¹⁰ Tracking Orders would execute only if the price of the Tracking Order is equal to or better than the national best bid or offer ("NBBO").¹¹ Pursuant to the proposed rule change, odd lot orders would continue to be matched to odd lot tracking orders held in the Tracking Order Process in

⁶ See PCXE Rule 7.37(c).

⁷ See proposed PCXE Rule 7.31(f).

⁸ See Notice.

⁹ See PCXE Rule 7.37 for a description of the ArcaEx execution processes that precede the Tracking Order Process, including the directed process, display process, and working order process. See also proposed PCX Rule 7.37(c).

¹⁰ See Proposed PCXE Rule 7.31(f).

¹¹ See PCXE Rule 7.37.

accordance with a user's¹² set parameters, such as maximum aggregate size, maximum tradeable size, and the price (which is set at the NBBO).¹³

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁴ In particular, the Commission finds that the proposal, as amended, is consistent with Section 6(b)(5) of the Act,¹⁵ which requires, among other things, that a national securities exchange's rules 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 mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that under the proposal, incoming orders executed in the Tracking Order Process should be executed in a manner equivalent to that under PCX's existing rules, but that the proposed rule change should simplify the process for entering Tracking Orders. Thus, the Commission believes that the proposed changes to the Tracking Order Process do not raise any new issues or regulatory concerns. The Commission notes that an order may not be executed pursuant to the new Tracking Order

¹² "User" is defined in PCXE Rule 1.1(yy).

¹³ See current and proposed PCXE Rule 7.31(g) for a definition of the odd lot tracking order and proposed PCXE Rule 7.37(c) for a description of the odd lot tracking order process.

¹⁴ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78f(b)(5).

Process at a price that is inferior to the NBBO.¹⁶ Furthermore, the Commission notes that any order that is not executed in its entirety pursuant to one of ArcaEx's other order execution processes is eligible for matching and execution pursuant to the Tracking Order Process, and that any User of the ArcaEx system may submit a Tracking Order.¹⁷

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-PCX-2005-87), as amended by Amendment No.1, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Nancy M. Morris
Secretary

¹⁶ See PCXE Rule 7.37.

¹⁷ As is currently the case, only an "Odd Lot Dealer," as defined in PCXE Rule 1.1(gg), may submit an odd lot tracking order. See current and proposed PCXE Rule 7.31(g).

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).