

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53338; File No. SR-PCX-2005-141)

February 21, 2006

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change Relating to Modifications to the Archipelago Exchange's Closing Auction

On December 21, 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 rules governing the Closing Auction³ of the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE. The proposed rule change was published for notice and comment in the Federal Register on January 19, 2006.⁴ The Commission received no comment letters on the proposal.

The proposed rule change would clarify ArcaEx's Closing Auction functionality and conform it substantially to its Market Order Auction rules.⁵ Specifically, the proposed rule change would provide that if there were Limited Price Orders⁶ eligible for execution in the Closing Auction, the Closing Auction price would be the Indicative Match Price⁷ and that if no

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See PCXE Rule 7.35(e).

⁴ See Securities Exchange Act Release No. 53096 (January 11, 2006), 71 FR 3145.

⁵ See PCXE Rule 7.35(c).

⁶ See PCXE Rule 1.1(s).

⁷ See PCXE Rule 1.1(r).

such orders were eligible for execution, any Market-on-Close Orders (“MOC”)⁸ submitted to participate in the Closing Auction, would be rejected. In addition to a few non-substantive changes, the proposed rule change would clarify the priority for execution of orders on the side of an imbalance in the Closing Auction and the circumstances, such as system malfunctions, in which Limit-on-Close Orders (“LOC”)⁹ and MOC Orders would be cancelled. The Exchange also proposes to delete a provision in the Closing Auction rule related to limiting the Closing Auction price to a threshold amount since a similar concept is already incorporated into the definition “Indicative Match Price.”

The proposed rule change would limit the Closing Auction to Exchange-listed securities, including Exchange-listed funds for which PCXE is the primary market. In its filing, the Exchange explained that, as a result of limited participation and limited liquidity in the ArcaEx Closing Auction, orders are frequently executed at prices that vary from the closing prices at other primary markets. The proposed rule change is aimed at protecting Users¹⁰ from executions that may occur at such prices. In addition, the proposal would clarify that orders submitted to the Closing Auction while such auction is suspended would be rejected.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹¹ In particular, the Commission finds that the proposed rule change is consistent with Section

⁸ See PCXE Rule 7.31(dd).

⁹ See PCXE Rule 7.31(ee).

¹⁰ See PCXE Rule 1.1(yy).

¹¹ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

6(b)(5) of the Act,¹² which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change is reasonably designed to clarify and conform substantially the Closing Auction pricing mechanism to the Market Order Auction pricing mechanism, as well as to provide investors with a clearer understanding of how orders will be priced in the Closing Auction. Further, the proposal appears to be reasonably designed to delineate the circumstances under which the PCXE may suspend the Closing Auction, which should enhance transparency for Users as to when a Closing Auction in a particular security may not occur.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-PCX-2005-141) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Nancy M. Morris
Secretary

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).