

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50230; File No. SR-PCX-2004-67)

August 23, 2004

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendments Nos. 1 and 2 Thereto Amending PCXE Rule 7.55 Relating to the Processing of Incoming ITS Commitments

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 July 14, 2004, the Pacific Exchange, Inc. (“PCX” or “Exchange”), through its wholly owned subsidiary PCX Equities, Inc. (“PCXE”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act,<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. On August 12, 2004, the PCX filed Amendment No. 1 to the proposed rule change.<sup>5</sup> On August 13, 2004, the PCX filed Amendment No. 2 to the proposed rule change.<sup>6</sup> The Commission is publishing this notice,

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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> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>4</sup> 17 CFR 204.19b-4(f)(1).

<sup>5</sup> See letter from Mai S. Shiver, Director, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (“Division”), Commission, dated August 11, 2004. Amendment No. 1 replaced the proposed rule change in its entirety.

<sup>6</sup> See letter from Mai S. Shiver, Director, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated August 12, 2004. Amendment No. 2 corrects the pagination and attaches Exhibit A, which was inadvertently omitted from the proposed rule change.

as amended, 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 is proposing to amend PCXE Rule 7.55 (“Definitions”), which governs the Archipelago Exchange (“ArcaEx”), an equities trading facility of PCXE, to clarify current ArcaEx practices with respect to the processing of incoming commitments over the Intermarket Trading System (“ITS”). The text of the proposed rule change appears below. New text is in italics.

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**Rule 7**

**Equities Trading**

**Section 5 – Intermarket Trading System Plan**

Rule 7.55 (a) – No change.

(b) Provisions of the Plan. The Corporation has agreed to comply to the best of its ability, and absent reasonable justification or excuse, to enforce compliance by its ETP Holders with the provision of the Plan. In this connection, the following shall apply:

(1) – (3) – No change.

(4) The ETP Holder who made the bid or offer which is sought by a commitment to trade received through ITS shall accept such commitment to trade, via the facilities of the Corporation, up to the amount of the bid or offer if the bid or offer is still available when the commitment to trade is received by such ETP Holder, via the facilities of the Corporation, unless acceptance is precluded by the Rules of the Corporation. In the event that the bid or offer which is sought by a commitment to trade is no longer available through the facilities of the Corporation when the

commitment is received, but a new bid or offer is available through the facilities of the Corporation which would enable the commitment to trade to be executed at a price which is more favorable than the price specified in such commitment, then the ETP Holder who made the bid or offer shall accept, via the facilities of the Corporation, such commitment at the price, and up to the amount of, the new bid or offer, unless acceptance is precluded by the Rules of the Corporation. An incoming commitment received during the time a trade-through complaint against the away market is outstanding is presumed to relate to the outstanding ITS complaint. Such incoming commitment will be matched with the bid or offer traded through at the price of the bid or offer residing in the ArcaEx book. The presumption in this rule shall have no bearing on the resolution of the ITS complaint.

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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 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 IV below. The Exchange 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 Exchange proposes to add language to PCXE Rule 7.55 to clarify current ArcaEx practices with respect to the processing of incoming ITS commitments sent by an

away market during the time a trade-through complaint against the away market is outstanding. The ITS Operating Committee recently proposed to adopt an ITS Resolution Indicator, or “.R” modifier, that ITS participants would be required to include on all commitments to trade sent in resolution of an ITS administrative message or complaint from another participant. Currently, there is no such modifier available. The PCX states that the proposed .R modifier has been under discussion amongst members of the ITS Operating Committee for some time and the Exchange is hopeful that it will be approved. Until such time, the Exchange believes that the clarification in this proposed rule change should provide greater certainty with respect to ITS processing and ultimately lead to a more efficient marketplace.

PCXE Rule 7.55 governs how incoming commitments via ITS are handled by ArcaEx. The PCX states that on the current ArcaEx listed platform, incoming ITS commitments from an away market are executed at the ArcaEx best bid or offer (“BBO”) unless an ArcaEx order has been traded-through by the away market. According to the PCX, if an ArcaEx order is traded-through and a complaint is generated by the Exchange, an incoming ITS commitment received by ArcaEx is matched, where appropriate, with the offended ArcaEx order at the order price (and not the BBO should the order price be different from the BBO). The Exchange believes that the proposed rule change is designed to more clearly describe the ArcaEx processing “presumption” that all incoming ITS commitments received from an away market during the time a trade-through complaint against the away market is outstanding relate to the outstanding trade-through complaint. The proposed amendment to the rule also specifies that this presumption shall have no bearing on the resolution of the ITS trade-through complaint.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>7</sup> of the Act, in general, and further the objectives of Section 6(b)(5),<sup>8</sup> in particular, because it is designed 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 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 were neither solicited nor received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act,<sup>9</sup> and Rule 19b-4(f)(1) thereunder,<sup>10</sup> because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing PCX rule. At any time within 60 days of the filing of the proposed rule change, the

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

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

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

<sup>10</sup> 17 CFR 240.19b-4(f)(1).

Commission may summarily abrogate the proposed 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.<sup>11</sup>

#### 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>);
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PCX-2004-67 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-PCX-2004-67. 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 change between the Commission and any

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<sup>11</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on August 13, 2004, the date the PCX submitted Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

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 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-2004-67 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).