

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50296; File No. SR-PCX-2004-49)

August 31, 2004

Self-Regulatory Organizations; Pacific Exchange, Inc; Order Approving a Proposed Rule Change to Amend Rules Governing the Archipelago Exchange by Adding a New Order Modifier Entitled “Don’t Arb Me”

On June 3, 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”), 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> a proposed rule change to amend its rules governing the Archipelago Exchange (“ArcaEx”), the equities trading facility of PCXE, to add a new order type entitled the “Don’t Arb Me” modifier. The proposed rule change was published for comment in the Federal Register on July 28, 2004.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

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.<sup>4</sup> In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>5</sup> which requires, among other things, that the rules of the Exchange be designed to promote just and equitable principles of

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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> See Securities Exchange Act Release No. 50054 (July 21, 2004), 69 FR 45104.

<sup>4</sup> In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and, in general, to protect investors and the public interest. In addition, the Commission believes that the proposed rule change is consistent with provisions of Section 11A(a)(1)(C)(i) of the Act,<sup>6</sup> which states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure economically efficient execution of securities transactions.

Specifically, the Commission believes that the proposal should promote increased efficiency and effectiveness in the Exchange's market operation and enhanced investment choices available to investors over a broad range of trading scenarios. The Commission also believes that allowing the Exchange to implement the "Don't Arb Me" modifier should facilitate enhanced order interaction and foster price competition. In addition, the Commission notes that the "Don't Arb Me" modifier was developed in response to Exchange participants' requests for the additional functionality.

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<sup>6</sup> 15 U.S.C. 78k-1(a)(1)(C)(i).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change, as amended, (SR-PCX-2004-49) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).