

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50662; File No. SR-PCX-2004-102)

November 15, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Notification Requirements for Offerings of Securities Pursuant to Regulation M

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 October 29, 2004, the Pacific Exchange, Inc. (“PCX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Exchange has filed the proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice 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, through its wholly owned subsidiary, PCX Equities, Inc. (“PCXE”), proposes to amend its rules governing the Archipelago Exchange (“ArcaEx”), the equities trading facility of PCXE. With this filing, PCX is proposing a new rule PCXE Rule 5.2(b)(1), which would require an Equity Trading Permit Holder (“ETP

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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).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

Holder”) that participates in any offering of securities listed on the Exchange to submit certain information to PCXE regarding the offering. Proposed additions are italicized.

Rule 5.2(b)(1) Notification Requirements for Offering of Securities

(A) An ETP Holder which acts as the lead underwriter of any offering in a security, shall notify the Exchange of such offering in such form and within such time frame as may be prescribed by the Exchange and shall provide the following information:

- (1) Name of security
- (2) Symbol
- (3) Type of security
- (4) Number of shares offered
- (5) Offering price
- (6) Date of pricing
- (7) Time of pricing
- (8) Pricing basis
- (9) Beginning and ending dates of the restricted period under Regulation M (if applicable)
- (10) Syndicate ETP Holders
- (11) Firm submitting notification
- (12) Name of individual submitting notification
- (13) Telephone number of individual submitting notification
- (14) Such other information required by the Exchange from time to time

(B) Any ETP Holder effecting a syndicate covering transaction or imposing a penalty bid or placing or transmitting a stabilizing bid in a security shall provide prior notice of such to the Exchange in such format and within such time frame as the Exchange may from time to time require.

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 self-regulatory organization 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 self-regulatory organization 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 purpose of this proposed rule is to require that ETP Holders provide the Exchange information necessary to support appropriate surveillance over restricted trading activity on ArcaEx in accordance with Regulation M.<sup>5</sup> Regulation M is intended to preclude manipulative conduct by persons with an interest in the outcome of an offering by proscribing certain activities of underwriters, issuers, selling security holders, and others in connection with offerings of securities. Pursuant to proposed PCXE Rule 5.2(b)(1), the required information shall be submitted to the Exchange in such form and within such time frame as prescribed by the Exchange.

Each ETP Holder that participates in an offering of securities listed on the Exchange shall notify the Exchange of such offering and shall provide the Exchange with the following information:

- a. Name of Security
- b. Symbol
- c. Type of Security
- d. Number of Shares Offered
- e. Offering Price
- f. Date of Pricing
- g. Time of Pricing
- h. Pricing Basis

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<sup>5</sup>

17 CFR 242.100.

- i. Beginning and Ending dates of the restricted period under Regulation M (if applicable)
- j. Syndicate ETP Holders
- k. Firm submitting notification
- l. Name of individual submitting notification
- m. Telephone number of individual submitting notification
- n. Such other information required by the Exchange from time to time

In addition, any ETP Holder effecting a syndicate covering transaction or imposing a penalty bid or placing or transmitting a stabilizing bid in a security shall provide prior notice of such to the Exchange in such format and within such time frame as the Exchange may from time to time require.

The submission of this information to the Exchange will allow the Exchange to monitor trading in the security in question or any reference security traded on the Exchange for possible price manipulation.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>6</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>7</sup> in particular, because it is designed to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments 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

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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 on the proposed rule change were neither solicited nor received.

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

The Exchange has designated the proposed rule change as one that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest pursuant to Section 19(b)(3)(A)<sup>8</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>9</sup> At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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. The PCX provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing the proposed rule change.

IV. Solicitation of Comments

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

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>); or
- Send an E-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PCX-2004-102 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-2004-102. 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 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 Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such 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-2004-102 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>10</sup>

Margaret H. McFarland  
Deputy Secretary

