

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50756; File No. SR-PCX-2004-83)

November 30, 2004

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by the Pacific Exchange, Inc. Relating to Changing the Opening Time and the Commencement of the Opening Auction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 22, 2004, the Pacific Exchange, Inc. (“PCX” or “Exchange”) submitted to 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 PCX. On November 22, 2004, the PCX submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, through its wholly owned subsidiary PCX Equities, Inc. (“PCXE”), is proposing to change the opening time and the commencement of the Opening Auction from 5:00 am (Pacific Time) to 1:00 am (Pacific Time) and modify PCXE Rules 7.34 and 7.35, respectively.

The text of the proposed rule change, as amended, is below. Proposed additions are in italics. Proposed deletions are in [brackets].

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced and superceded the original filing in its entirety.

Rule 7

Equities Trading

Trading Sessions

Rule 7.34(a) Sessions. The Archipelago Exchange shall have three trading sessions each day the Corporation is open for business unless otherwise determined by the Corporation:

- (1) Opening Session. The Opening Session shall begin at 1:00:00 [5:00:00] am (Pacific Time) and conclude at the commencement of the Core Trading Session. The Opening Auction and the Market Order Auction shall occur during the Opening Session.
- (2) Core Trading Session. The Core Trading Session shall begin for each security at 6:30:00 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever comes later, and conclude at 1:00:00 pm (Pacific Time).
- (3) Late Trading Session. The Late Trading Session shall begin following the conclusion of the Core Trading Session and conclude at 5:00:00 pm (Pacific Time).

Rule 7.34(b) – (c) – No change.

- d) Orders Permitted in Each Session.
 - (1) During the Opening Session:
 - (A) Orders eligible for the Display Order Process and for the Working Order Process that have been designated as available for the Opening Session are eligible for entry into and execution on the Archipelago Exchange.

- (B) Stop Orders are not eligible for execution during the Opening Session.
- (C) Users may enter market and Auction-Only Limit Orders for inclusion in the Market Order Auction. Market orders and Auction-Only Limit Orders are not eligible for execution during the Opening Session, except during the Market Order Auction.
- (D) Neither the Directed Order Process nor the Tracking Order Process is available during the Opening Session. For the purposes of the Opening Session, market Directed Orders are included in the Market Order Auction.
- (E) NOW Orders are eligible for execution during the Opening Session, provided, however, NOW Orders are not eligible for the Opening Auction or the Market Order Auction.
- (F) PNP Orders are eligible for execution during the Opening Session.
- (G) Limited Price Orders are eligible for execution during the Opening Session; provided, however, a Timed Order designated for the Opening Session and designated as good from 1:00 [5:00] am (Pacific Time) is not eligible for execution during the Opening Auction. Similarly, a Timed Order designated for the Opening Session and designated as good from 6:30 am (Pacific Time) is not eligible for execution during the Market Order Auction
- (H) Notwithstanding that the Market Order Auction occurs during the Opening Session, as set forth in Rule 7.34(a)(1), the following

orders not designated for the Opening Session shall participate in the Market Order Auction:

- (i) Market orders designated for the Core Trading Session and entered prior to the conclusion of the Market Order Auction; and
- (ii) Limited Price Orders designated for the Core Trading Session and entered prior to 6:28 am (Pacific Time).

(2) – (3) – No change.

Rule 7.34(e) – (f) – No change.

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Rule 7.35(a) Order Entry and Cancellation Before Opening Auction

- (1) Users may submit any orders to the Archipelago Exchange beginning [at 4:30 am (Pacific Time)] 30 minutes prior to the Opening Session. Any such Limited Price Orders designated for the Opening Session will be queued until 1:00 [5:00] am (Pacific Time) at which time they will be eligible to be executed pursuant to paragraph (b) of this Rule. Any such market orders will be queued until the Market Order Auction at which time they will be executed pursuant to paragraph (c) of this Rule.
- (2) Only Limited Priced Orders designated for the Opening Session will be eligible for the Opening Auction. However, a Limited Price Order designated for the Opening Session and entered as a Timed Order good from 1:00 [5:00] am (Pacific Time), is not eligible for execution during the Opening Auction. Market orders entered before the Opening Auction

or during the Opening Session will participate in the Market Order Auction. However, a Limited Price Order designated for the Opening Session and entered as a Timed Order good from 6:30 am (Pacific Time), is not eligible for execution during the Market Order Auction. Limited Price Orders, including Timed Orders, designated for the Core Trading Session and not designated for the Opening Session will become eligible for execution at the commencement of the Market Order Auction pursuant to Rule 7.35(c).

- (3) Beginning 30 minutes prior to the Opening Session [at 4:30 am (Pacific Time)], and various times thereafter as determined from time to time by the Corporation, the Indicative Match Price of the Opening Auction, and any Imbalance associated therewith, shall be published via electronic means as determined from time to time by the Corporation.
- (4) Orders that are eligible for the Opening Auction may not be cancelled 2 minutes prior to the Opening Session [between 4:58 am (Pacific Time) and] until the conclusion of the Opening Auction.

(b) Opening Auction.

- (1) At 1:00 [5:00] am (Pacific Time), Limited Price Orders designated for the Opening Session are matched and executed in the Opening Auction; provided, however, a Limited Price Order designated for the Opening Session and entered as a Timed Order good from 1:00 [5:00] am (Pacific Time), is not eligible for execution during the Opening Auction.

(2) – (4) – No change.

Rule 7.35(c) – (f) – No change.

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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 PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX 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

As part of its continuing efforts to enhance participation on the Archipelago Exchange (“ArcaEx”) facility, the PCX is proposing to change the opening time from 5:00 am Pacific Time to 1:00 am Pacific Time. This proposal applies to both exchange-listed and over-the-counter (“OTC”) securities. In addition, the Exchange is seeking to change the commencement of the Opening Auction⁴ from 5:00 am Pacific Time to 1:00 am Pacific Time. The Exchange believes that opening earlier will increase opportunities for attracting liquidity on the system. Specifically, Users⁵ of ArcaEx trading in American Depositary Receipts (“ADRs”) and other

⁴ See PCXE Rule 7.35(b).

⁵ See PCXE Rule 1.1 (yy).

foreign issues have expressed interest in using the ArcaEx system at times coinciding with the hours of overseas trading markets.⁶

Currently, PCXE Rule 7.34 states that the Opening Session begins at 5:00:00 am (Pacific Time). The Exchange proposes to modify this to 1:00 am (Pacific Time). Furthermore, pursuant to PCXE Rule 7.35, the Opening Auction commences at 5:00 am (Pacific Time). The Exchange also proposes to modify the commencement of the Opening Auction⁷ to be consistent with the Opening Session commencement at 1:00 am (Pacific Time). Furthermore, times associated with disseminating the Opening Auction Imbalance and order cancellation requirements are kept consistent with the existing timeframes relative to the opening time and adjusted in accordance with the proposed 1:00 am (Pacific Time) opening time.

⁶ For example the Deutsche Borse opens at 9:00 am Central European Time. ArcaEx has proposed opening at 1:00 am Pacific Time which is the equivalent to 10:00 am Central European Time. ArcaEx is unable to open consistent with the Deutsche Borse opening time due to limitations on when the OTC SIP is available for quote and trade dissemination.

⁷ The Commission staff made a technical correction to Amendment No. 1 of the filing to signify that the Exchange intended to refer to the "Opening Auction." Telephone conversation between Mai Shiver, Director, Regulatory Policy, PCX and Tim Fox, Attorney, Division of Market Regulation, Commission, on November 26, 2004.

ArcaEx will submit all quotes and trades that are generated in the early session beginning at 1:00 a.m. (Pacific Time) to the consolidated quote and trade system for public dissemination.⁸ Accordingly, quotes and trades will be made available to the investing public consistent with the availability of quotes and trades during regular trading hours. In addition, the Exchange will work with foreign markets (i.e. those that are trading subject securities during the early time period) to coordinate trading halts. Such coordination will occur in a manner similar to that of trading halts during regular trading hours with domestic markets. Specifically, the Exchange represents that PCX Market Management staff will be on-site starting at 1:00 a.m. (Pacific Time) to monitor trading in ArcaEx to maintain a fair and orderly market and make any necessary rulings. For example, during early trading when unusual quoting activity is noted in the security underlying an ADR, PCX Market Management will contact the foreign market where the underlying is listed to obtain additional information as needed. When a halt has been declared on the primary market due to material news, PCX will also halt trading in the subject security on ArcaEx. If a halt has been declared for another non-regulatory reason (e.g. system malfunction

⁸ The Securities Information Processor in exchange-listed securities that is responsible for consolidation and dissemination of all exchange-listed quotes and trades is the Securities Industry Automation Corporation (“SIAC”) and for dissemination of Nasdaq-listed quotes and trades is Nasdaq. ArcaEx has agreed with SIAC and Nasdaq that each of the respective Securities Information Processors will open the tape at 1:00 a.m. (Pacific Time). In addition, ArcaEx has notified the Operating Committee of the Consolidated Tape Association (“CTA”) and Consolidated Quote (“CQ”) Plans and the OTC/UTP Committee of its agreement with the Processors to open the tapes early. ArcaEx will not begin trading at 1:00 a.m. (Pacific Time) until the Securities Information Processors are ready to accommodate quoting and trading at that time and have provided ArcaEx with notification that they are prepared to disseminate quotes and trades at that time.

or unusual price movement), PCX will use its discretion to determine whether trading should be halted in the subject security on ArcaEx.⁹

PCX is establishing contacts with foreign markets trading during the early time period. Several markets have offered to include PCX representatives on distribution lists in order to proactively contact PCX during instances of trading halts. Also, to the extent another domestic market commences trading during early hours, PCX will coordinate halts with these markets as well. Further, PCX has developed appropriate surveillance for the early session. PCX Market Management staff will be available real-time to monitor quote and trade activity and to make rulings where appropriate. Specifically, PCX Market Management will rely on communications with primary markets and third-party data vendor systems to review and monitor news, quoting activity, and stock trading patterns. To the extent unusual trading activity occurs during the early session prior to the arrival of PCX Regulatory Trading Officials (“RTOs”), PCX Market Management staff will refer such activity to the RTOs for follow-up upon their arrival. PCX Market Management and RTO procedures manuals will be updated to reflect the early open procedures, including PCX Market Management transition of issues to RTOs.

The Exchange believes opening earlier, consistent with trading hours in the overseas markets, will enhance transparency in these securities. Moreover, by providing overseas investors with the ability to trade in a U.S. based market, the proposal will provide additional trading opportunities for foreign investors interested in participating in U.S. markets during overseas business hours. Such opportunities should enable enhanced order interaction, foster

⁹ See PCXE Rule 7.13 regarding PCX’s authority to declare a trading halt.

price competition, promote a more efficient and effective market operation, and enhance the investment choices available to investors.

In Amendment No. 1, the Exchange represented that PCX Market Management staff will be on-site starting at 1:00 a.m. (Pacific Time) to monitor trading in ArcaEx to maintain a fair and orderly market and make any necessary rulings. To the extent unusual trading activity occurs during the early session prior to the arrival of PCX RTOs, PCX Market Management staff will refer such activity to the RTOs for follow-up upon their arrival. PCX Market Management and RTO procedures manuals will be updated to reflect the Early Open procedures, including PCX Market Management transition of issues to RTOs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5),¹¹ 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 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 PCX does not believe that the proposed rule change will impose any burden on competition 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

No written comments were solicited or received with respect to the proposed rule change.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the PCX consents, the Commission will:

- (A) by order approve such proposed rule change, as amended; or
- (B) institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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. Please include File Number SR-PCX-2004-83 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-2004-83. 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-2004-83 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.¹²

Margaret H. McFarland
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).