SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53052; File No. SR-PCX-2004-46)

January 5, 2006

Self-Regulatory Organizations; Order Approving Proposed Rule Change, and Amendment No. 1 Thereto, by the Pacific Exchange, Inc. Relating to Modifying the Market Imbalance Calculation for the Opening and Market Order Auctions on the Archipelago Exchange

On May 14, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE") submitted to 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 modify the practices that the Exchange employs with respect to the calculation of the Market Imbalance during the Market Order Auction[3] and Closing Auction[4] conducted on the Archipelago Exchange ("ArcaEx"), the equity trading facility of the Exchange. On May 24, 2004, the PCX submitted Amendment No. 1 to the proposed rule change.[5] The Federal Register published the proposed rule change, as amended, for comment on June 3, 2004.[6] The Commission received no comments on the proposed rule change, as amended.

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[1]     15 U.S.C. 78s(b)(1).

[2]     17 CFR 240.19b-4.

[3]     See PCXE Rule 7.35(c).

[4]     See PCXE Rule 7.35(e).

[5]     Amendment No. 1 replaced and superseded the original filing in its entirety.

[6]     Securities Exchange Act Release No. 49773 (May 26, 2004), 69 FR 31440.

The Exchange proposes to modify PCXE Rule 1.1(q) for the purpose of modifying the ArcaEx calculation of the Market Imbalance. Currently, the "Market Imbalance" is defined as the imbalance of any remaining Market Orders[7] that are not matched for execution during the Market Order Auction[8] and the imbalance of any remaining Market-on-Close ("MOC") Orders that are not matched for execution during the Closing Auction.[9] As such, all eligible Market Orders, MOC Orders,[10] Limit Orders,[11] and Limit-on-Close ("LOC") Orders[12] that are eligible for execution in the applicable auction against Market Orders or MOC Orders are taken into consideration when calculating the Market Imbalance for the Market Order Auction and Closing Auction. The Exchange proposes to modify the Market Imbalance calculation for both the Market Order Auction and the Closing Auction so that it will only take into consideration Market Orders (for the Market Order Auction) and MOC Orders (for the Closing Auction) in determining the Market Imbalance.

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[13] In particular, the Commission believes

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7       PCXE Rule 7.31(a).

8       PCXE Rule 7.35(c).

9       PCXE Rule 7.35(e).

10      PCXE Rule 7.31(dd).

11      PCXE Rule 7.31(b).

12      PCXE Rule 7.31(ee).

13      In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5),[15] 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.

The Exchange represents that the modified Market Imbalance calculation will provide Users[16] with more information about the number of Market Orders and MOC Orders available for execution on the side of the market with an excess number of such orders during the applicable auction. The Commission believes that the Exchange's proposal is reasonably designed to promote transparency of the available Market Orders and MOC Orders that have been submitted to participate in the applicable auction. The Commission also believes that the proposed rule change, as amended, appears to be reasonably designed to promote competition among Users seeking to execute against Market Orders and MOC Orders, which are executed before marketable Limit Orders and LOC orders during the Market Order Auction and Closing Auction, respectively.

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[14]    15 U.S.C. 78f(b).

[15]    15 U.S.C. 78f(b)(5).

[16]    See PCXE Rule 1.1(yy) for the definition of "User."

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change, as amended, (SR-PCX-2004-46) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Nancy M. Morris
Secretary

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[17]      15 U.S.C. 78s(b)(2).

[18]      17 CFR 200.30-3(a)(12).