

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53069; File No. SR-PCX-2006-01)

January 6, 2006

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Minimum Price Variation for Entry of Orders for Equity Securities Traded on the Archipelago Exchange

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 January 4, 2006, 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 and II below, which Items have been prepared by the Exchange. The PCX filed the proposal 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend its rules governing the Archipelago Exchange (“ArcaEx”), the equities trading facility of PCXE, to: (1) amend Commentary .04 to PCXE Rule 7.6 on minimum price variations for quoting and entry of orders in equity securities; (2) delete Commentary .05 to PCXE Rule 7.6; (3) renumber Commentary .06 to PCXE Rule 7.6 and correct a cross-reference in that Commentary; and (4) delete Commentary .01 to PCXE Rule 6.16. The text of the proposed rule change is available on the PCX’s Web site

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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).

(<http://www.pacificex.com>), at the principal office of the PCX, and at the Commission's Public Reference Room.

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 Commission adopted Regulation NMS on April 6, 2005.<sup>5</sup> One of the new rules under Regulation NMS is Rule 612, Minimum Pricing Increment. That rule prohibits a national securities exchange, its members, and quotation vendors (among others) from displaying, ranking, or accepting a bid, offer, order, or indication of interest for any NMS stock that is priced in an increment smaller than \$0.01 per share, unless it is priced less than \$1.00 per share.<sup>6</sup> In the latter case, the exchange, its members, and its quotation vendors may display, rank, or accept a bid, offer, order, or indication of interest in the NMS stock in an increment no smaller than \$0.0001

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<sup>5</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005). Regulation NMS is comprised of the rules at 17 CFR 642.600 - 642.612.

<sup>6</sup> See 17 CFR 242.612(a).

per share.<sup>7</sup> The compliance date for Rule 612 is January 31, 2006.<sup>8</sup>

Currently, PCXE Rule 7.6, Commentary .04 provides that the minimum price variation (“MPV”) for quoting and entering orders in equity securities traded on ArcaEx is \$0.01 per share, with the exception of securities priced less than \$1.00 per share, in which case, on a pilot basis through September 30, 2005, the MPV is \$0.001 per share. PCXE Rule 7.6, Commentary .05 provides that PCXE will round such sub-penny prices to whole penny increments, by rounding the bid down to the next whole penny and rounding the offer up to the next whole penny, and will display the rounded quotes in the consolidated quotation system without a rounding identifier.

With this filing, the Exchange is seeking to amend PCXE Rule 7.6, Commentary .04 to provide that (1) the Exchange will accept orders in equity securities traded on ArcaEx that are priced less than \$1.00 per share in increments as small as \$0.0001 per share, as permitted under Rule 612; (2) it will round such orders to whole penny increments following the same rounding conventions described above; and (3) it will display the rounded quotes in the consolidated quotation system. As currently provided in PCXE Rule 7.6, Commentary .04, the MPV for quoting and entering orders in equity securities traded on ArcaEx is \$0.01 per share.

The Exchange also proposes to delete Commentary .05 to PCXE Rule 7.6 and Commentary .01 to PCXE Rule 6.16 because they will become outdated when the amendments to PCXE Rule 7.6, Commentary .04 take effect, and to change the numbering of PCXE Rule 7.6, Commentary .06 to Commentary .05 and correct a cross-reference in that Commentary.

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<sup>7</sup> See 17 CFR 242.612(b).

<sup>8</sup> See Securities Exchange Act Release No. 52196 (Aug. 2, 2005), 70 FR 45529 (Aug. 8, 2005).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition, 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 on the proposed rule change were neither solicited nor received.

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

Because the proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). As required by Rule 19b-4(f)(6)(iii) under the Act, the Exchange also provided with the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the proposed rule change.

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.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing.<sup>13</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay and allow the proposed rule change to become operative immediately. The Commission hereby grants that request.<sup>14</sup> The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal is consistent with the requirements of Rule 612 and waiving the operative delay will allow the PCX to meet the compliance deadline for Rule 612.

#### 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>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PCX-2006-01 on the subject line.

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<sup>13</sup> See id.

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-PCX-2006-01. 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. 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-2006-01 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>15</sup>

Nancy M. Morris  
Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).