the mechanisms of a free and open market and to protect investors and the public interest. In addition, the PCX believes that the proposed rule change, as amended, is consistent with provisions of Section 11A(a)(1)(B) of the Act,[6] which states that new data processing and communications techniques create an opportunity for more efficient and effective market operations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change, as amended, 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

The PCX neither solicited nor received written comments concerning the proposed rule change.

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. 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 filings will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–48 and should be submitted by November 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 03–26100 Filed 10–15–03; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48598; File No. SR–PCX–2003–46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Transmission of Identity Orders

October 7, 2003.

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 September 5, 2003, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which the PCX has prepared. On September 30, 2003 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"), proposes to amend its rules governing the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE. Specifically, the PCX proposes to offer an identity order feature to its Equities Trading Permit ("ETP") Holders.[4] In

---

[6] 15 U.S.C. 78k(a)(1)(B).

[7] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Peter Bloom, Managing Director of Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission dated September 29, 2003 ("Amendment No. 1"). In Amendment No. 1, the PCX replaced its proposed rule change in its entirety.

[4] *See* PCXE Rule 1.1(n) for the definition of "ETP Holder."

---

accordance with the proposal, an ETP Holder may affirmatively choose, on an order-by-order basis, to display orders with its unique ETP identifier (hereinafter referred to as the "ETPID"). To facilitate the change, the PCX proposes to amend PCXE Rules 7.7(b) ("Transmission of Bids or Offers") and 7.36(b) ("Order Ranking and Display") to clarify and reconcile when ETP Holders may display their identities. The PCX also wishes to make additional changes to PCXE Rule 7.7(a). The text of the proposed rule change is below. Proposed new language is italicized; deletions are in brackets.

* * * * *

Rule 7.7(a). [The names of ETP Holders bidding for or offering securities through the use of the facilities of the Corporation shall not be transmitted from the facilities of the Corporation to a non-holder of an ETP.] No ETP Holder having the right to trade through the facilities of the Corporation and who has been a party to or has knowledge of an execution shall be under obligation to divulge the name of the buying or selling firm in any transaction.

(b) Except as otherwise permitted by these Rules, no ETP Holder shall transmit through the facilities of the Corporation any information regarding a bid, offer, [or] other indication of an order*, or the ETP Holder's identity* to a non-holder of an ETP *or to another ETP Holder* until *permission to disclose and transmit* such bid, offer, [or] other indication of an order*, or the ETP Holder's identity* has been [disclosed and permission to transmit such information has been] obtained from the originating ETP Holder *or the originating ETP Holder affirmatively elects to disclose its identity.*

* * * * *

Order Ranking and Display

Rule 7.36—No change.
(a)(1)–(a)(2)—No change.
(b) Display. *Except as otherwise permitted by Rule 7.7,* [A] *all* orders at all price levels in the Display Order Process of the Arca Book shall be displayed to all Users and other market participants on an anonymous basis.
(c)—No change.

* * * * *

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

A. Introduction

The PCX proposes to offer ETP Holders the ability to display their identities with orders entered into the ArcaEx. The identity order feature would offer an ETP Holder the choice to display its unique ETPID with a specified order. Alternatively, an ETP Holder may choose to remain anonymous.

Any identity orders entered into ArcaEx would be included in the Arca Book data feed that ArcaEx makes available free of charge to Users [5] and other subscribers. Identity orders would also be included in the ArcaEx limit order book that is displayed for free on the ArcaEx Web site.

ArcaEx would process orders designated as identity orders no differently from other orders sent to ArcaEx. PCXE Rules 7.36 (Order Ranking and Display) and 7.37 (Order Execution) set forth the order interaction process for orders entered on the ArcaEx. Orders designated as identity orders would be ranked, displayed, and executed under the same criteria (under PCXE Rules 7.36 and 7.37) as anonymous orders in the ArcaEx. ArcaEx has no capacity limitations on the number of identity orders that could be displayed for an individual security.

The purpose of the identity order feature is to provide more visibility to those ETP Holders who may choose to identify their ETPIDs with their trading interest in a particular security. The PCX believes that the identity order feature would benefit investors by increasing market transparency in an automatic execution venue such as ArcaEx. By providing a mechanism by which ETP Holders could display their identities, ArcaEx hopes to attract more orders and contribute more liquidity to the market while adding to the transparency of trading interest.

[5] *See* PCXE Rule 1.1(yy) for the definition of ''User.''

B. Order Interaction

As with all orders entered on ArcaEx, identity orders would be centrally processed for execution by computer, subject to the price, time, and priority rules that govern the automated matching and execution of orders. No ETP Holder has any special control over the timing of an execution or any special order handling advantages on ArcaEx. All Users would see and be privy to the same orders ranked in the ArcaEx Book. No User would have special access to trading interest that is not also available to others on ArcaEx, and all Users would have the equivalent opportunity to receive fills.

An ETP Holder displaying an identity order would be subject to the same rules applicable to the ETP Holder's orders entered on ArcaEx on an anonymous basis.[6] Use of the identity order by ETP Holders would not require registration as a Market Maker [7] on ArcaEx under PCXE rules. Market Maker status is available only to those ETP Holders who seek registration as Market Makers.[8] Only those ETP Holders that seek registration as a Market Makers are required to maintain two-sided markets in return for the benefits of Market Maker status, *e.g.*, the ArcaEx rebates to Market Makers for the execution of ''Q Orders'' [9] and the ability to obtain exempt credit under Regulation T. ETP Holders that elect to use the identity order would have no commitment to ArcaEx to maintain two-sided identity orders on a continuous basis.

C. Market Makers

With respect to Market Makers, the PCX's proposal would not alter the responsibilities of Market Makers, nor does it change the manner in which

[6] For example, ETP Holders would remain prohibited from trading ahead of customer limit orders pursuant to PCXE Rule 6.16(a), which provides that ''[n]o ETP Holder may accept and hold an unexecuted limit order from its customer (whether its own customer or a customer of another ETP Holder) and continue to trade on the Corporation the subject security for its own account at prices that would satisfy the customer's limit order, without executing that limit order; provided, however, that an ETP Holder may negotiate specific terms and conditions applicable to the acceptance of limit orders. * * *''

[7] See PCXE Rule 1.1(u) states that ''[t]he term ''Market Maker'' shall refer to an ETP Holder that acts as a Market Maker pursuant to Rule 7.''

[8] PCXE Rule 7.20(a) states that ''[n]o ETP Holder shall act as a Market Maker in any security unless such ETP Holder is registered as a Market Maker in such security by the Corporation pursuant to this Rule. * * *'' PCXE Rule 7.23 and Rule 7.34(b) set forth the obligations of market makers and apply only to those ETP Holders who are registered as Market Makers. For example, a Market Maker must maintain a two-sided order or ''Q Order'' in every stock in which the Market Maker is registered.

[9] *See* PCXE Rule 7.31(k) for the definition of ''Q Order.''

Market Maker orders would be processed and executed within ArcaEx. Market Makers are obligated to enter and maintain continuous, two-sided limit orders in the securities in which they are registered. There would be no limit, however, on the number of orders a Market Maker may enter into ArcaEx, whether anonymous or identity orders. A Market Maker would be able to maintain multiple proprietary orders, including multiple Q Orders in the securities in which were registered. Under the proposal, Market Makers would be permitted to use the identity order feature for any and all of the orders that they are eligible to use. As with any identity order, a Market Maker's ETPID would be displayed in relation to a specified order. A Market Maker may choose to make the Q Order or any other order an identity order.[10]

Whether utilizing anonymous orders or identity orders, Market Makers would remain subject to the rules governing their conduct and the handling of orders. Specifically, PCXE Rule 7.26(a) states that a Market Maker must maintain an information barrier between the market making activities and other business activities, including conducting a public securities business and acting as a General Authorized Trader (''GAT'') [11] on ArcaEx. This separation between the Market Making activities of an ETP Holder and the handling of public orders is an important mechanism to separate the Market Maker from knowledge of pending transactions, order flow information, and other sensitive information at other parts of the firm.[12] As long as the Market Maker has an effective system of internal controls that operate to prevent the Market Making desk from obtaining knowledge of customers' limit orders that are received for execution by other business units of the broker-dealer, the Market Maker does not have responsibilities to protect customer limit orders received by other parts of the firm.[13]

[10] As stated above, ArcaEx has no capacity limitations on the number of identity orders that can be displayed for an individual security.

[11] Rule 1.1(*o*) defines a General Authorized Trader ''GAT'' to mean ''an authorized trader who performs only non-market making activities on behalf of an ETP Holder.''

[12] *See* PCXE Rule 7.26(b).

[13] For example, where an ETP Holder has an agency desk and a Market Maker desk, both desks will be permitted to use identity orders. Should an agency desk utilize identity orders to represent customer orders, Market Makers from the same firm would not have responsibilities to protect the customer orders, assuming an appropriate information barrier is in place. Once the agency desk displays an identity order in the ArcaEx limit order book, the price time rules in the automated execution system of the ArcaEx ensure that the

D. Section 11(a) Under the Act

The PCX believes that the use of identity orders on ArcaEx would not confer ETP Holders any time and place advantages over other orders on ArcaEx. As such, the introduction of identity orders would not change the analysis of Section 11(a) of the Act [14] to the PCX provided to the Commission prior to the approval of ArcaEx.[15] Accordingly, the introduction of the identity order would not change the PCX's conclusion that the order execution algorithm of ArcaEx complies with the requirements of, and satisfies the policy concerns underlying, Section 11(a) of the Act [16] without requiring public customer priority.

Section 11(a) of the Act [17] prohibits a member of a national securities exchange from effecting transactions on the exchange for its own account, the account of an associated person, or an account in which it or an associated person exercises investment discretion (collectively, "covered accounts"), unless an exception applies. In enacting this provision, Congress was concerned about members benefiting in their principal transactions from special "time and place" advantages associated with floor trading—such as the ability to "execute decisions faster than public investors." [18] The Commission, however, has adopted a number of exceptions to the general statutory prohibition for situations in which the principal transactions contribute to the fairness and orderliness of exchange markets or do not reflect any time and place trading advantages. The PCX believes that the use of identity orders on ArcaEx would not alter Rule 11a2–2(T),[19] commonly referred to as the "effect versus execute" rule,[20] which provides an exemption that applies to the PCX. The effect versus execute rule imposes four requirements "designed to put members and non-members on the same footing, to the extent practicable, in light of the purposes of Section 11(a)." [21] Given ArcaEx's automated matching and execution services, no ETP Holder enjoys any special control over the timing of execution or special order handling advantages, as all orders would be centrally processed for execution by computer, rather than being handled by a member through bids or offers made on the trading floor. Because ArcaEx's open, electronic structure is designed to prevent any ETP Holders from gaining any time and place advantages, the PCX believes that ArcaEx satisfies the four requirements of the "effect versus execute" rule as well as the general policy objectives of Section 11(a) of the Act.[22]

E. Surveillance

According to the PCX, PCXE has developed procedures to maintain a high level of surveillance of ETP Holders and their use of specific order types, including those orders designated as identity orders, for executions that take place on ArcaEx. Among its procedures, the PCX has developed mechanisms to help detect manipulation of prices on ArcaEx whether or not through use of identity orders.

Use of identity orders would help an ETP Holder to advertise the trading interest and activity the firm has in a particular stock. Should an ETP Holder attract order flow and wish to match buy and sell orders for execution away from the centralized limit order book of ArcaEx, an ETP Holder would have to report that trade to a marketplace that allows broker-dealers to "print" trades to the tape. Specifically, broker-dealers in the Nasdaq dealer market are permitted to define parameters of a trade (*i.e.*, price) without bringing the trade to an exchange system for validation. By design, the Nasdaq dealer market enables broker-dealers to control trade execution outside of a centralized price validation system. The regulation of these trades is the responsibility of the marketplace that supports and encourages the execution of these trades away from an exchange infrastructure. Any executions by a broker-dealer brought to a marketplace that permits "printing" are trades appropriately within the jurisdiction of the alternate marketplace.[23] Should Nasdaq (or other marketplace) determine that it requires information or assistance from the PCX for the surveillance of these trades, the PCX would provide such information and assistance.

To facilitate the identity order feature, the Exchange proposes to make changes to PCXE Rules 7.7(b) and 7.36(b). Currently, PCXE Rule 7.7(b) prohibits an ETP Holder from transmitting information "regarding a bid, offer or other indication of an order" to a non-ETP Holder until the bid, offer or other indication information has been disclosed and permission to transmit the information has been obtained from the originating ETP Holder. Conversely, PCXE Rule 7.36(b) provides for anonymity in displaying orders in the Display Order Process [24] of the ArcaEx Book.[25]

The Exchange wishes to revise PCXE Rule 7.36(b) to state that except as provided by PCXE Rule 7.7(b), all orders at all price levels will continue to be displayed on an anonymous basis. Therefore, a User could choose to either display its ETPID or remain anonymous.

customer order will be executed in a fair and consistent manner. A Market Maker from that same firm is subject to the same rules, and importantly, has no special advantage over the execution of other orders in the book, including the customer order represented by the agency desk. The price time priority granted to orders in the ArcaEx book dictate that orders with the best price are executed first, and, where there is more than one order at the best price, the order first in time receives an execution. With these rules, a Market Maker's order at a price equal to the price of other orders in the ArcaEx book, would receive an execution over these orders only if the Market Maker's order was entered first. A Market Maker's order entered *after* other orders in the book can receive an execution over other orders in the book only if the Market Maker order is at a better price (by a minimum of one penny) than the orders displayed. These rules for the ranking, display and interaction of orders apply equally to all orders entered by all Users of the ArcaEx.

[14] 15 U.S.C. 78k.

[15] *See* Letter, dated April 19, 2001 from Cherie MacCauley, Counsel to PCX, Wilmer Cutler & Pickering to John Polise, Division of Market Regulation.

[16] 15 U.S.C. 78k(a).

[17] 15 U.S.C. 78k(a).

[18] *See* Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978); Securities Exchange Act Release No. 14713 (April 28, 1978), 43 FR 18557 (May 1, 1978); Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6093 (Jan. 31, 1979). The 1978 and 1979 Releases cite the House Report at 54–57.

[19] 17 CFR 240.11a2–2(T).

[20] Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions directly on the exchange floor. To comply with the rule's conditions, a member (1) must transmit the order from off the exchange floor; (2) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution; (3) may not be affiliated with the executing member; and (4) with respect to an account over which the member or an associated person has investment discretion, neither the member nor the associated person may retain any compensation in connection with effecting the transaction without express written consent from the person authorized to transact business for the account in accordance with the rule.

[21] *See* 1978 Release II at 18560.

[22] 15 U.S.C. 78k(a).

[23] The ability of broker-dealers to advertise trading interest is not limited to the use of exchange trading systems. Broker-dealers can display indications of interest through services such as Autex (offered by Thompson Financial). Autex permits broker-dealers to display the price and size of indications of interest and communicate with other subscribers interested in facilitating trades. While not a trading system, Autex allows broker-dealers to advertise their trading activity and attract trading interest. Broker-dealers finding counterparties through this service must bring such trades to Nasdaq's dealer market which permits the printing of trades. Whether the prices of these transactions are executed within the standards of best execution or other standards of appropriate order handling is the business of the regulator for the marketplace supporting the "printing" infrastructure.

[24] *See* PCXE Rule 7.36(a)–(c) for a discussion of the Display Order Process.

[25] *See* PCXE Rule 1.1(a) for a definition of Arca Book.

Additionally, the Exchange proposes to revise PCXE Rule 7.7(a) [26] to reflect the proposed changes to PCXE Rules 7.7(b) and 7.36(b).

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[27] in general, and Section 6(b)(5) of the Act,[28] in particular, in that it will promote just and equitable principles of trade; facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system; and 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

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 Exchange consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change 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 is consistent with the Act.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 PCX. All submissions should refer to file number SR–PCX–2003–46 and should be submitted by November 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–26102 Filed 10–15–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48601; File No. SR–Phlx–2003–51]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Listing Standards Regarding Issuers' Audit Committees and Delisting Procedures

October 8, 2003.

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 July 14, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with 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 Phlx. 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 Phlx proposes to amend Phlx Rule 849, Audit Committee/Conflicts of Interest, and Phlx Rule 811, Delisting Policies and Procedures. The majority of the proposed rule changes are intended to comply with the requirements of new Commission Rule 10A–3 under the Act.[3] Specifically, the new listing standards proposed to be adopted by the Exchange pursuant to Commission Rule 10A–3 would require that:

(1) Each member of the audit committee of the issuer must be independent according to specified criteria (proposed Phlx Rule 849(b)(1));[4]

(2) The audit committee of each issuer must be directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the issuer, and each such registered public accounting firm must report directly to the audit committee (proposed Phlx Rule 849(b)(2));

(3) Each audit committee must establish procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls or auditing matters, including procedures for the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters (proposed Phlx Rule 849(b)(3));

(4) Each audit committee must have the authority to engage independent counsel and other advisors, as it determines necessary to carry out its duties (proposed Phlx Rule 849(b)(4)); and

(5) Each issuer must provide appropriate funding for the audit committee (proposed Phlx Rule 849(b)(5)).

Additional changes relating to audit committee charters, audit committee

---

[26] PCXE Rule 7.7(a) provides that "[t]he names of ETP Holders bidding for or offering securities through the use of the facilities of the Corporation shall not be transmitted from the facilities of the Corporation to a non-holder of an ETP. No ETP Holder having the right to trade through the facilities of the Corporation and who has been a party to or has knowledge of an execution shall be under obligation to divulge the name of the buying or selling firm in any transaction."

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

[29] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.10A–3.

[4] Currently, Phlx Rule 849 requires listed companies to maintain audit committees, a majority of the members of which are "independent directors" as defined in Phlx Rule 851. This current requirement would remain in effect pending the implementation of the higher standards proposed in this rule change. (Phlx Rule 851 requires listed issuers to maintain a minimum of two independent directors on their boards. It also defines "independent director" as a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.)