

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51990; File No. SR-PCX-2005-16)

July 07, 2005

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Amend its Market Data Rebate Program to Allow Equity Trading Permit Holders to Receive Rebates on an Estimated Basis

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 February 1, 2005, 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, II, and III below, which Items have been prepared by the PCX. On July 5, 2005, the PCX amended the proposed rule change.³ The Commission is publishing this notice, as amended, 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. With this filing, the Exchange proposes to amend its current market data rebate program by allowing Equity Trading Permit Holders (“ETP Holders”) to receive market data rebates on an estimated basis when certain conditions are met. The text of the proposed rule change is available on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the PCX amended the purpose section of this filing to include examples of how estimated market data rebates would be calculated and how estimated market data rebates would be distributed.

PCX's Web site (<http://www.pacificex.com/>), at the PCX's principal office, 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 PCX 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 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

The PCX proposes to modify the current ArcaEx market data revenue sharing program applicable to limit orders posted in ArcaEx in Tape B securities⁴ that execute against inbound marketable orders. The Exchange proposes to add language to the ArcaEx fee schedule describing a new estimated payment option available to qualifying ETP Holders who have earned certain Liquidity Provider Credits (the "Estimated Rebate Program"). Under the proposal, ETP Holders would be able to receive Liquidity Provider Credit payments on an estimated, monthly basis for limit orders posted by such ETP Holder in Tape B securities that execute against inbound marketable orders, if certain qualifying conditions are met.

⁴ Tape B securities include securities that are listed for trading on the American Stock Exchange and certain other securities that are deemed to be eligible for such listing.

Currently, ETP Holders who earn Liquidity Provider Credits for such transactions receive payments from the Exchange on a quarterly basis, after the Exchange has received its share of market data revenue for Tape B from the Consolidated Tape Association (“CTA”) Plan. Under the proposed Estimated Rebate Program, eligible ETP Holders would be able to receive their share of Liquidity Provider Credits, based on an estimate, on a monthly basis before the quarterly revenues from the CTA Plan are paid to the Exchange. The amounts to be paid on an estimated basis to ETP Holders are calculated by using the tape credit percentages specified in the current rebate policy in effect for ArcaEx at the time⁵ and applying such percentages to the ETP Holder’s trading activity for the month in question.

The process for determining and maintaining eligibility in the program is described below.

Initial Qualification in the Estimated Rebate Program

An ETP Holder will qualify for participation in the Estimated Rebate Program if, in the three-month period preceding the then-current month, the ETP Holder executed at least 250 million Tape B shares through ArcaEx.⁶ This threshold is the “Initial Qualification” for the Estimated Rebate Program. An ETP Holder who has satisfied the Initial Qualification will be entitled to enroll in the Estimated Rebate Program and receive payments for Liquidity Provider Credits earned in the next month.

⁵ The current Liquidity Provider Credit applied to limit orders in Tape B securities residing in the ArcaEx Book that execute against inbound marketable orders is 50% of tape revenue generated for such trade.

⁶ This figure will exclude QQQ from any trade activity before December 1, 2004.

Maintenance Level Requirement

After an ETP Holder meets its Initial Qualification, it will be required to also meet a certain “Maintenance Level” to continue to qualify for the Estimated Rebate Program. The Maintenance Level will be satisfied if an ETP Holder executes at least 500 million Tape B Shares during each successive, continuous three-month period thereafter. If an ETP Holder who has met the Initial Qualification standard fails to sustain its Maintenance Level, the ETP Holder would not be eligible to receive estimated rebates for the next three months. Instead, the ETP Holder would be required to receive rebates as specified under the current rebate policy. This three-month period will be referred to as an “Ineligibility Period.” When the Ineligibility Period ends, the ETP Holder can attempt to re-qualify for the Estimated Rebate Program by meeting the Initial Qualification standard. Trading activity during the Ineligibility Period may count toward re-establishing the ETP Holder’s eligibility in the Estimated Rebate Program.

Any estimated Liquidity Provider Credits paid to an ETP Holder under the Estimated Rebate Program will be reconciled to the ETP Holder’s actual Liquidity Provider Credit payment due when the Exchange receives the actual figures from the CTA Plan at quarter-end. Any necessary adjustments will be made with the next payment due to the ETP Holder (i.e., the next Estimated Rebate Program payment or current rebate policy payment, as applicable).

Example

An example using hypothetical figures is included below. Assume a firm executes one million qualifying trades, totaling 300 million shares, each month for a

period of nine consecutive months. After the first three months, the firm is entitled to receive the following amounts:

| Month | # of Trades | # of Shares | Payment Amounts |
|-------|------------------|--------------------|-----------------|
| Jan: | 1 million trades | 300 million shares | 0 |
| Feb: | 1 million trades | 300 million shares | 0 |
| Mar: | 1 million trades | 300 million shares | 0 |

At the end of the quarter, assume that payments received by the Exchange from the CTA plan for the quarter January through March amount to \$1.00 per print. At this time, the firm would be due \$1.5 million (i.e., 1 million trades multiplied by \$.50, or half of the \$1.00 print, multiplied by three months). In addition, the firm's level of activity would satisfy the Initial Qualification standard, qualifying the firm to participate in the Estimated Rebate Program for the next quarter. The next three month of firm payments are:

| Month | # of Trades | # of Shares | Payment Amounts |
|-------|------------------|--------------------|------------------------|
| Apr: | 1 million trades | 300 million shares | \$500,000 ⁷ |
| May: | 1 million trades | 300 million shares | \$500,000 |
| Jun: | 1 million trades | 300 million shares | \$500,000 |

Assume that at the end of the quarter in June the payments received from the plan amount to \$0.95 per print. At this point, it becomes clear that based on its activity levels, the firm should have received \$475,000 per month (i.e., 1 million trades multiplied by \$.475, or one-half of one print of \$.95) for each month in the quarter. Because the firm

⁷ The \$500,00 figure would be based on the trading totals and print amounts for the most recent quarter, i.e., 1 million average trades multiplied by .50, or one-half of one \$1.00 print.

received \$500,000 per month in connection with the Estimated Rebate Program, its payments for the next quarter will have to be adjusted downward \$75,000 (i.e., \$25,000 for each month). In addition, the firm's trading levels for the quarter satisfy the Maintenance Level in the Estimated Rebate Program. The firm's adjusted payments for the next three months would be:

| Month | # of Trades | # of Shares | Payment Amounts |
|-------|------------------|--------------------|-----------------|
| Jul: | 1 million trades | 300 million shares | \$400,000 |
| Aug: | 1 million trades | 300 million shares | \$475,000 |
| Sep: | 1 million trades | 300 million shares | \$475,000 |

The \$400,000 payment in July is based on a \$475,000 estimated payment (i.e., 1 million trades multiplied by \$.475, or one-half of a print of \$.95), minus the extra \$75,000 received by the firm in the April through June time period.

The rationale for the proposed changes in this filing is to make the pricing for executions on the ArcaEx more competitive. The Exchange evaluated the economics of modifying its current market data rebate structure and determined that it was feasible and appropriate, given the costs involved and competitive concerns.

2. Statutory Basis

The PCX believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,⁸ in general, and with Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

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

The PCX does not believe that the proposed rule change would 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

No written comments were solicited or received with respect to 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 self-regulatory organization 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. 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-2005-16 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-PCX-2005-16. 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 Room. 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-NYSE-2005-16 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.¹⁰

Jill M. Peterson
Assistant Secretary

¹⁰ 17 CFR 200.30-3(a)(12).