

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52672; File No. SR-PCX-2005-121)

October 25, 2005

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Add to its Current Revenue Sharing Program an Opportunity to Share in ETP Operating Revenue for Cross Orders in Tape C Securities

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 21, 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 and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6)⁴ thereunder,⁵ 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 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 proposed rule change, the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The Exchange provided the Commission with written notice of its intention to file this proposed rule change on September 9, 2005. See Rule 19b-4(f)(6), 17 CFR 240.19b-4(f)(6).

Exchange proposes to add to its current revenue sharing program an opportunity to share in ETP Operating Revenue for Cross Orders⁶ in Tape C securities. The text of the proposed rule change is available at the 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 Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. 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 Exchange proposes to modify the current ArcaEx revenue sharing program applicable to Cross Orders executed in ArcaEx Tape C securities. The Exchange proposes to add language to the ArcaEx fee schedule describing the new ETP Operating Revenue sharing program. The proposal is similar to revenue sharing programs currently in place at the Nasdaq Stock Market and the National Stock Exchange,⁷ although it will be a more narrow application of such programs because it is limited to Cross Orders.

⁶ See PCXE Rule 7.31 for Cross Order definitions.

⁷ See Securities Exchange Act Release Nos. 48303 (August 8, 2003), 68 FR 48654 (August 14, 2003) and 46688 (October 18, 2002), 67 FR 65816 (October 28, 2002). The NSX program includes book fees and technology fees, and the Nasdaq program includes technology fees. ArcaEx does not charge technology fees or book fees, and as such, these fees are not included in the proposed calculation of ETP Operating Revenue, infra.

Under the proposal, ETP Holders would be eligible to share in ETP Operating Revenue (“ETPOR”) associated with Cross Orders in Tape C securities. Specifically, ETPOR is defined as operating revenue that is generated by ETP Holders and consists of transaction fees and market data revenue that is attributable to ETP Holders’ Cross Order executions. ETPOR shall not include any investment income or regulatory monies.

The sharing of ETPOR shall be based on each ETP Holder’s pro rata contribution to ETPOR and the amount shared shall not exceed ETPOR. Under the proposal, PCX’s Board of Directors would have the authority to determine the appropriate amount of ETPOR to be shared with ETP Holders. In making this determination, the Board would balance the objective of sharing a meaningful percentage of ETPOR with the objective of maintaining ArcaEx’s financial integrity.⁸ Such payments would be made quarterly after ArcaEx has accounted for operating expenses and working capital contributions. ArcaEx proposes to implement such changes effective November 1, 2005.

A specific example of how the proposal would be implemented follows.

First, the number of cross order executions in Tape C securities would be determined by ETP Holder for the quarter. Second, transaction fees and market data revenue (ETPOR) associated with such executions would be calculated. Third, PCX’s Board of Directors would determine what percentage of ETPOR would be shared with ETP Holders. Fourth, that percentage would be allocated on a pro rata basis to ETP Holders based on their relative number of cross order executions in Tape C securities.

The rationale for these changes is to reduce the costs incurred by ETP Holders in executing Cross Orders on ArcaEx and to make the pricing for executions on the ArcaEx

⁸ Regulatory fees are currently separately allocated to PCX and as such, ArcaEx will not compromise funds that would be used for regulatory responsibilities.

more competitive. The Exchange evaluated the economics of modifying its current revenue sharing program and determined that is [sic] was feasible and appropriate, given the costs involved and competitive concerns.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)⁹ of the Act, in general, and furthers the objectives of Section 6(b)(5),¹⁰ in particular, because 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 foregoing proposed rule change does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² 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 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.

The PCX has asked the Commission to waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Such waiver will allow the PCX to implement competitive pricing of ArcaEx Cross Orders in Tape C securities. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹³

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:

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 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).

- 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-2005-121 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-2005-121. 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 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-2005-121 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.¹⁴

Jonathan G. Katz
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).