SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52719; File No. SR-PCX-2005-73)

November 2, 2005

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to the Establishment of a Portfolio Crossing Service on the Archipelago Exchange

I.   Introduction

On June 7, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with 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

establish an after-hours Portfolio Crossing Service ("PCS"). The PCX filed Amendment No. 1

to the proposed rule change on September 14, 2005.[3] The proposed rule change, as amended,

was published for comment in the Federal Register on September 28, 2005.[4] The Commission

received no comments from the public in response to the proposed rule change. This order

approves the proposed rule, as amended.

II.   Description

The PCX, through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE"), proposed

to establish the PCS, a new transaction and trade reporting mechanism for Equity Trading Permit

Holders ("ETP Holders")[5] to allow the execution and reporting of portfolio trades in equity

securities on the Archipelago Exchange ("ArcaEx"). In order to use PCS, ETP Holders would

input a basket of individual cross orders, each with a basket number identifier tying it to the

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

[2]   17 CFR 240.19b-4.

[3]   Amendment No. 1 replaced and superseded the original filing in its entirety.

[4]   See Securities Exchange Act Release No. 52472 (September 20, 2005), 70 FR 56762.

other orders in the basket. These baskets of individual cross orders would not interact with other orders residing in the Arca Book.[6] Each side of an individual coupled order in a basket entered into PCS would execute without regard to the priority of other orders entered into PCS.

To be eligible for PCS, orders must be part of a basket of individual cross orders comprised of at least 15 securities and with a total market value of at least $1,000,000.[7] All symbols eligible for trading on ArcaEx would be eligible for trading on PCS. If a basket of orders meets the standards as set forth in proposed Rule 7.65, the basket would be referred to as a "PCS Order." Each individual component of a PCS Order must be appended with a basket number identifier tying it to the other order components of the PCS Order. This identifier would be used to distinguish the individual components of any PCS Order from an ordinary Cross Order[8] destined for ArcaEx.

ETP Holders would be able to enter PCS Orders at any time during the Exchange's trading day.[9] When the Exchange receives a PCS Order, it would hold such order until the end of trading, currently 5:00 p.m. Pacific Time. All PCS Orders received during any particular trading day would be executed simultaneously in PCS at least one minute after the close of trading on the Exchange, but in no event later than 8:59 p.m. Pacific Time. Each individual order component of a PCS Order would not interact with other PCS Orders or other orders

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[5]   See PCXE Rule 1.1(n).

[6]   See PCXE Rule 1.1(a).

[7]   See proposed PCXE Rule 7.65(a)(4)(a) for definition of "PCS Order."

[8]   See PCXE Rule 7.31(s).

[9]   The New York Stock Exchange's Crossing Session II ("NYSE CS II") is another after hours session which allows member firms the ability to cross a portfolio of orders. The NYSE CS II, however, does not accept orders until after the close of regular trading.

residing in the Arca Book in any way. Furthermore, trading halts occurring during the normal

market hours in one or more individual stocks would not affect the execution of PCS Orders.

However, if there is a market-wide halt in a symbol that remains in effect at 1:00 p.m. Pacific

Time, the Exchange would halt trading in such symbol through its PCS.

The Exchange would handle trade reporting for PCS executions in one of two different

ways, depending on whether a particular PCS component execution involved exchange-listed or

Nasdaq-listed securities. With respect to exchange-listed securities, the system would calculate

the total shares and total dollar amounts[10] of all exchange-listed symbols executed in PCS on any

particular trading day. The Exchange would then transmit this total as an administrative

message over the high speed line to The Securities Industry Automation Corporation ("SIAC").[11]

The Exchange would not consolidate the exchange-listed volume attributable to PCS with the

volume in those securities occurring in the non-PCS trading session occurring on ArcaEx. With

respect to Nasdaq-listed securities, the Exchange would report symbols individually to Nasdaq

as regular transactions as of the following morning.[12]

All PCS executions, whether exchange-listed or Nasdaq securities, will be "covered

sales" occurring on the Exchange for the purposes of Section 31 of the Act.[13] The Exchange will

report PCS activity to the Commission in Part II of Form R31 under the Act.

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[10]   Since shares and dollar amounts will be calculated on a aggregate basis, volume and
         price information will not be available at an individual security level.

[11]   ArcaEx represented that it would coordinate with SIAC to ensure it would be able to
         receive messages from ArcaEx reflecting aggregate PCS executions. See infra note 14.

[12]   Nasdaq is the securities information processor for Nasdaq-listed securities. Section 11 of
         the Nasdaq Unlisted Trading Privileges Plan deals with trade reporting for Nasdaq
         securities after 6:30 p.m. Eastern Time.

[13]   15 U.S.C. 78ee.

In addition, the Exchange has requested exemptive relief from the requirement in Rule 11Aa3-1 under the Act[14] that the Exchange disseminate on a consolidated basis trading volume for each of the component securities executed on the Exchange's PCS. In addition, the Exchange has requested clarification from the Commission with respect to the application of Rule 10a-1 under the Exchange Act and Regulation SHO.

III.   Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the proposal, as amended, is consistent with the provisions of Section 6(b)(5) of the Act,[16] which requires, among other things, that a national securities exchange's rules be designed to prevent fraud and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the establishment of PCS appears to be reasonably designed to promote a free and open market and the national market system by offering ETP Holders the opportunity to enter crossing portfolio orders to be executed against each other

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[14]   The Commission notes that Rule 11Aa3-1 has been redesignated as Rule 601 of Regulation NMS. 17 CFR 242.601.

[15]   In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16]   15 U.S.C. 78f(b)(5).

following the conclusion of the ArcaEx Late Trading Session.[17] The establishment of the PCS

also appears to be reasonably designed to enhance order execution opportunities on ArcaEx by

providing investors and ETP Holders with greater opportunities for executing large portfolio

trades.

IV.   Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[18] that the proposed

rule change (SR-PCX-2005-73), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated

authority.[19]

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Jonathan G. Katz
Secretary

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[17]   See PCXE Rule 7.34(a)(3).

[18]   15 U.S.C. 78s(b)(2).

[19]   17 CFR 200.30-3(a)(12).