

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with section 6(b) of the Act⁷ in general and furthers the objectives of section 6(b)(5) of the Act.⁸ The Commission believes that the proposed rule change is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanism of a free and open market.⁹

The Commission believes that Cross-and-Post Orders will facilitate order interaction on ArcaEx and increase investor choices with respect to executing orders. Currently on ArcaEx, any portion of a Cross Order that remains unexecuted is canceled. Customers must then re-enter the residual portion of the order if they wish to have it posted in the Arca Book. The Commission believes that the Cross-and-Post Order will enable automatic electronic posting of the residual portion of the Cross-and-Post Order.

IV. Order Granting Approval

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁰ that the proposed rule change, as amended (SR-PCX-2003-38), is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48888; File No. SR-PCX-2003-46]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Transmission of Identity Orders

December 5, 2003.

I. Introduction

On September 5, 2003, the Pacific Exchange, Inc. ("PCX") 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 offer an identity order feature to its Equities Trading Permit ("ETP") Holders. On September 30, 2003, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for public comment in the **Federal Register** on October 16, 2003.³ The Commission received one comment letter on the proposal.⁴ This order approves the proposed rule change, as amended.

II. Description of the Proposal

The PCX proposes to offer ETP Holders the ability to display their identities with orders entered into the Archipelago Exchange ("ArcaEx"). The identity order feature would offer an ETP Holder the choice to display its unique ETP Identifier ("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 Users⁵ 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.

III. Summary of Comments

As noted above, the Commission received one comment in response to the proposed rule change, which supported the proposal. The commenter believed that allowing ETP Holders to choose to display their orders with their unique ETPIDs promotes market transparency in general and is therefore consistent with a key National Market System goal. The commenter also noted that the ability to trade on ArcaEx on an attributed or anonymous basis would be similar to the ability of participants in the Nasdaq Stock Market, Inc.'s SuperMontage to trade on an attributed basis using their own MPID or on an anonymous basis using the SIZE feature.

IV. Discussion

To facilitate the identity order feature, the PCX has proposed to amend 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 of 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 Process⁶ of the ArcaEx Book.⁷

The Exchange wishes to revise PCXE Rule 7.36(b) to state that except as

the execution of Cross Orders. See PCXE Rule 7.31(s).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ In approving this rule, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 48598 (October 7, 2003), 68 FR 59663.

⁴ See letter dated November 21, 2003, from Duncan L. Niederauer, Managing Director, Spear, Leeds and Kellogg to Jonathan G. Katz, Secretary, Commission.

⁵ See PCXE Rule 1.1(yy) for the definition of "User."

⁶ See PCXE Rule 7.36(a)-(c) for a discussion of the Display Order Process.

⁷ See PCXE Rule 1.1(a) for a definition of Arca Book.

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.

Additionally, the Exchange proposes to revise PCXE Rule 7.7(a)⁸ to reflect the proposed changes to PCXE Rules 7.7(b) and 7.36(b).

In the proposed rule change, the PCX represented that identity orders would be centrally processed for execution by computer, subject to the same price, time, and priority rules that govern the automated matching and execution of orders. According to the PCX, the use of identity orders on ArcaEx would not confer ETP Holders any time and place advantages over other orders on ArcaEx, and would therefore comply with the requirements and policy concerns underlying section 11(a) of the Act.⁹ The PCX also represented that the proposed rule change would not alter the responsibilities of market makers and would not change the manner in which market maker orders are processed and executed within ArcaEx. Finally, the PCX represented that PCXE has developed procedures to maintain a high level of surveillance of ETP Holders and their use of specific order types, including mechanisms to help detect manipulation of prices on ArcaEx, through the use of identity orders or otherwise.

Based, in part, on the PCX's representations, the Commission is approving the PCX's introduction of the identity order feature. The Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 6 of the Act¹⁰ and the rules and regulations thereunder applicable to a national securities exchange.¹¹ In particular, the Commission finds that the identity order feature is consistent with section 6(b)(5) of the Act,¹² which requires, among other things, that the Exchange's rules be designed to perfect the mechanisms of a free and open market and, in general, to protect investors and the public interest. The Commission

believes that providing ETP Holders with the ability to display their identity on an order-by-order basis will add to market transparency by offering market participants the option of anonymity in placing orders on the PCX.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-PCX-2003-46), is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48875; File No. SR-Phlx-2003-75]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Adopt Commentary .04 of Its Rule 1064 To Allow the Concurrent Representation of Hedging Stock Positions With Option Facilitation Orders in the Trading Crowd

December 4, 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 November 17, 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 Exchange. 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 adopt Commentary .04 to Phlx Rule 1064, Crossing, Facilitation, and Solicited Orders, to allow the concurrent representation of hedging stock positions with option facilitation orders in the trading crowd ("Stock Tied Up Orders"). The text of the proposed rule

change is set forth below. Text in italics indicates material to be added.

* * * * *

Crossing, Facilitation and Solicited Orders

Rule 1064. (a)-(c) No change.

(d) No member organization or person associated with a member or member organization who has knowledge of the material terms and conditions of a solicited order, an order being facilitated, or orders being crossed, the execution of which are imminent, shall enter, based on such knowledge, an order to buy or sell an option for the same underlying security; an order to buy or sell the security underlying such class; or an order to buy or sell any related instrument until (i) the terms and conditions of the order and any changes in the terms of the order of which the member, member organization or person associated with a member or member organization has knowledge are disclosed to the trading crowd, or (ii) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received. For purposes of this Rule, an order to buy or sell a "related instrument" means, in reference to an index option, an order to buy or sell securities comprising 10% or more of the component securities in the index or an order to buy or sell a futures contract on an economically equivalent index.

Commentary:

.01-.03. No change.

.04. *Rule 1064(d) does not prohibit a member or member organization from buying or selling a stock position following receipt of a customer's options order but prior to announcing such order to the trading crowd, provided that:*

(a) such member or member organization shall create a written record that it is engaging in a "Stock Tied Up Order" (as described below) prior to buying or selling any shares of the underlying stock in the hedging stock position;

(b) such hedging stock position is: (i) comprised of the same underlying stock applicable to the option order; (ii) announced concurrently with the option order in the crowd; (iii) offered to the crowd in its entirety; and (iv) offered, at the stock execution price received by the member organization introducing the order, to any option crowd participant who has established parity or priority for the related options;

(c) the hedging stock position does not exceed the options order on a delta basis; and

(d) the hedging stock order is transacted promptly upon receipt of the

⁸ 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."

⁹ 15 U.S.C. 78k(a).

¹⁰ 15 U.S.C. 78f(b).

¹¹ In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.