

customer's receipt of the NYSE Alerts datafeed. On October 15, 2004, the NYSE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On October 28, 2004, the NYSE filed Amendment No. 2 to the proposed rule change.<sup>4</sup>

The proposed rule change, as amended, was published for comment in the **Federal Register** on November 12, 2004.<sup>5</sup> The Commission received no comments on the amended proposal.

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<sup>6</sup> and, in particular, the requirements of Section 6 of the Act<sup>7</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with Section 6(b)(4) of the Act<sup>8</sup> in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities.

The Commission notes that the NYSE is amending its fee schedule to incorporate a \$500 fee for its NYSE Alerts datafeed, which will provide real-time information relating to MOC Market Imbalances, Delayed Openings/Trading Halts, ITS Pre-Opening Indications/Trading Range Indications, Trading Collar Messages, and Circuit Breaker Messages. The Commission further notes that the information that would be included in the NYSE Alerts datafeed is currently available and would continue to be available to the public through the Consolidated Tape Association network and through various news services. Vendors and investors who choose to subscribe to NYSE Alerts would be paying for the convenience of having this currently available public information repackaged into a single datafeed. The Commission therefore believes that the proposed fee is reasonable and finds that the proposed rule change, as amended, is consistent with the Act.

<sup>3</sup> See letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 14, 2004 ("Amendment No. 1").

<sup>4</sup> See letter from Mary Yeager, Assistant Secretary, NYSE to Nancy Sanow, Assistant Director, Division, Commission, dated October 27, 2004 ("Amendment No. 2").

<sup>5</sup> See Securities Exchange Act Release No. 50639 (November 5, 2004), 69 FR 65488.

<sup>6</sup> In approving this proposed rule change, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

*It is therefore ordered*, pursuant to Section 19(b)(s) of the Act<sup>9</sup>, that the proposed rule change (File No. SR-NYSE-2004-53), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50847; File No. SR-PCX-2002-57]

### Self-Regulatory Organizations; Notice of Withdrawal of Proposed Rule Change by the Pacific Exchange, Incorporated Relating to the Implementation of a New Order Audit Trail System

December 14, 2004.

On August 9, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> to adopt new rules relating to the creation of an order audit trail system called Electronic Order Capture System ("EOC"). On July 28, 2003, the Exchange filed Amendment No. 1 to the proposed rule change. On July 30, 2003, the Exchange submitted Amendment No. 2 to the proposed rule change. On August 7, 2003, the proposed rule change, as amended, was published for comment in the **Federal Register** to solicit comment for interest persons.<sup>3</sup> No comments were received. Subsequently, on October 9, 2003 and October 14, 2003, the Exchange submitted Amendment Nos. 3 and 4 to the proposed rule change.

On December 14, 2004, the Exchange withdrew the proposed rule change and all amendments thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50868; File No. SR-PCX-2004-59]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to a New Order Modifier Entitled "Proactive if Locked Reserve"

December 16, 2004.

On July 1, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend its rules governing the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE, by adding new processing capability for ArcaEx Reserve Orders in situations where a Reserve order in an exchange-listed security is locked by another market. On October 26, 2004, the PCX submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On October 28, 2004, the PCX submitted Amendment No. 2 to the proposed rule change.<sup>4</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on November 15, 2004.<sup>5</sup> The Commission received no comments on the proposal.

The Exchange proposes to add a new order modifier entitled "Proactive if Locked Reserve" as an additional

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See letter from Steven B. Matlin, Senior Counsel, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 25, 2004, and accompanying Form 19b-4 ("Amendment No. 1"). Amendment No. 1 replaced and superseded the originally filed proposed rule change.

<sup>5</sup> See letter from Steven B. Matlin, Senior Counsel, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated October 25, 2004 ("Amendment No. 2") Amendment No. 2 made technical corrections to the proposed rule text of the proposed rule change, as amended.

<sup>6</sup> See Securities Exchange Act Release No. 50645 (November 5, 2004), 69 FR 65670.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 48264 (July 31, 2003), 68 FR 47124.