

or "NASD Regulation, Inc." Instead, the NASD uses "NASD" unless otherwise appropriate for corporate or regulatory reasons. Accordingly, the proposed rule change replaces several references to "the Association" and "the NASD" in the text of the proposed rule change with the name "NASD" and deletes several references to "NASD Regulation, Inc." Although the proposal would delete the name "NASD Regulation, Inc." NASD Regulation, Inc. will continue to perform the functions described in the rule.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,²⁷ which requires, among other things, that the NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(7) of the Act,²⁸ which provides that NASD members, or persons associated with its members, are appropriately disciplined for violations of any provisions of the Act or the NASD's rules.

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

The NASD does not believe that the proposed rule change will result in 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 were neither solicited nor received.

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 NASD 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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NASD-2003-110. 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, comments should be sent in hardcopy or by e-mail but not by both methods. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR-NASD-2003-110 and should be submitted by January 6, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48893; File No. SR-PCX-2003-38]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Establishment of a Cross-and-Post Order Type

December 8, 2003.

I. Introduction

On July 23, 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 1934¹ and Rule 19b-4 thereunder,² a proposed rule change to implement a new order type, the "Cross-and-Post Order," for use on the Archipelago Exchange ("ArcaEx"). On September 25, 2003, the PCX submitted Amendment No. 1 to the proposed rule change.³ Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on October 29, 2003.⁴ The Commission received no comments in response to the proposal. This order approves the PCX's proposed rule change.

II. Description

The PCX, through its wholly owned subsidiary, PCX Equities, Inc. ("PCXE") proposed to adopt a new order type called a "Cross-and-Post Order." The Cross-and-Post Order would be an order that is executed pursuant to the existing "Cross Order" rules⁵ while allowing for any residual portion of the Cross Order to be displayed in the Arca Book. Further, the ArcaEx trading system would cancel a Cross-and-Post Order at the time of order entry if: (i) The cross price would cause an execution at a price that trades through the NBBO; or (ii) the cross price is between the BBO and does not improve the BBO by the minimum price improvement increment ("MPII") pursuant to PCXE Rule 7.6(a), Commentary .06.⁶

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced the original filing in its entirety.

⁴ See Securities Exchange Act Release No. 48676 (October 21, 2003), 68 FR 61711 (SR-PCX-2003-38).

⁵ A "Cross Order" is a two-sided order with instructions to match the identified buy-side with the identified sell-side at a specified price (the "cross price"). See PCXE Rule 7.31(s).

⁶ The MPII on ArcaEx is equal to \$0.01 or 10% of the NBBO spread, whichever is greater. See PCXE Rule 7.6(a), Commentary .06. Under current PCXE rules, the MPII requirements must be satisfied in

²⁷ 15 U.S.C. 78o-3(b)(6).

²⁸ 15 U.S.C. 78o-3(b)(7).

²⁹ 17 CFR 200.30-3(a)(12).

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.