

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

The proposed rule change, as amended, was published for comment in the **Federal Register** on November 12, 2004.⁵ 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 exchange⁶ and, in particular, the requirements of Section 6 of the Act⁷ 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 Act⁸ 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.

³ 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").

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

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

⁶ 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).

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

It is therefore ordered, pursuant to Section 19(b)(s) of the Act⁹, 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.¹⁰

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"),¹ and Rule 19b-4 thereunder,² 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.³ 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.

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 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. 48264 (July 31, 2003), 68 FR 47124.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

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")¹ and Rule 19b-4 thereunder,² 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.³ On October 28, 2004, the PCX submitted Amendment No. 2 to the proposed rule change.⁴ The proposed rule change, as amended, was published for comment in the **Federal Register** on November 15, 2004.⁵ 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

⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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.

⁴ 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.

⁵ See Securities Exchange Act Release No. 50645 (November 5, 2004), 69 FR 65670.

processing capability for ArcaEx Reserve Orders⁶ in exchange-listed securities. An Equity Trading Permit Holder ("ETP Holder") could use this new order modifier when its Reserve Order in an exchange-listed security is locked by another market and that market has not shipped a commitment or moved its quote to clear the lock. The Proactive if Locked Reserve Modifier would allow an ETP Holder to instruct ArcaEx to ship its Reserve order to an away market when the Reserve Order has been locked (or crossed) by the away market and the offending away market has not resolved the lock (or cross) in a timely manner. Under the proposal, if the away market does not respond to a locked market complaint as provided for under the ITS Plan within an acceptable time period based on average responses from ITS participants, ArcaEx would proactively route an order to the offending market for the away market's displayed size up to the reserve amount of such order.⁷

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁸ and, in particular, the requirements of Section 6(b) of the Act⁹ and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁰ which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Commission believes that, in providing a method for ETP Holders to proactively unlock or uncross markets and execute their orders while working within the requirements of the ITS Plan, the proposed rule change, as amended, should provide greater efficiencies in the marketplace by giving ArcaEx participants increased opportunities for executing orders. In particular, the Commission believes that allowing ArcaEx participants to utilize this order

modifier may enhance order interaction and foster price competition.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (File No. SR-PCX-2004-59), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50854; File No. SR-PCX-2004-122]

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

December 14, 2004.

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 December 14, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comment 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 relating to the systematization of orders in connection the requirement to design and implement a consolidated options audit trail system ("COATS"). The text of the proposed rule change appears below. Additions are italicized; deletions are in brackets.

* * * * *

Rule 6

Options Trading

Applicability, Definitions and References

Rule 6.1(a)—No change.

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

¹ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(b) Definitions. The following items as used in Rule 6 shall, unless the context otherwise indicates, have meanings herein specified:

(1)–(38)—No change.

(39) *The term "Electronic Order Capture System ("EOC") means the Exchange's electronic audit trail and order tracking system that provides an accurate time-sequenced record of all orders and transactions on the Exchange pursuant to Section IV.B.e.(v) of the Commission's order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. EOC records the receipt of an order and documents the life of the order through the process of execution, partial execution, or cancellation. This system includes the electronic communications interface between EOC booth terminals and then Floor Broker Hand Held applications. Each OTP Holder or OTP Firm's EOC booth terminal and each Floor Broker Hand Held Terminal contains an electronic order entry screen that displays the terms and conditions of each order received by that OTP Holder or OTP Firm. OTP Holders and OTP Firms may record the details of the order directly into the EOC system as described herein, or, in the alternative, into the Electronic Tablet described in subsection (b)(40) below.*

(40) *The term "Electronic Tablet" means the Exchange's electronic method of recording orders that are hand written and transmitted to a Floor Broker's workstation for representation in order to create an accurate time-sequenced record of orders on the Exchange. The Electronic Tablet will automatically timestamp the receipt of an order when such order is transmitted to a Floor Broker's workstation for representation in the trading crowd and document the life of the order through the process of execution, partial execution or cancellation. This system includes the ability for a Floor Broker to hand write order information and automatically timestamp the report and provides a method to display report images at an OTP Holder or OTP Firm's workstation to manually key the order information for clearing purposes. Such clearing information will become part of the data required pursuant to Section IV.B.e.(v) of the commission's Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. OTP Holders and OTP Firms may record the details of the order directly into the EOC system (as*

⁶ Reserve Orders, defined in PCXE Rule 7.31, are limit orders with a portion of the size displayed and with a reserve portion of the size not displayed.

⁷ See ITS Plan Exhibit B, Section (d).

⁸ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).