

the mechanisms of a free and open market and to protect investors and the public interest. In addition, the PCX believes that the proposed rule change, as amended, is consistent with provisions of Section 11A(a)(1)(B) of the Act,<sup>6</sup> which states that new data processing and communications techniques create an opportunity for more efficient and effective market operations.

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

The PCX does not believe that the proposed rule change, as amended, will impose 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*

The PCX neither solicited nor received written comments concerning the proposed rule change.

### **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 PCX consents, the Commission will:

- (A) by order approve such proposed rule change, as amended; or
- (B) institute proceedings to determine whether the proposed rule change, as amended, 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. 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 in the Commission's Public Reference Room.

Copies of such filings will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-2003-48 and should be submitted by November 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-48598; File No. SR-PCX-2003-46]**

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Transmission of Identity Orders**

October 7, 2003.

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> notice is hereby given that on September 5, 2003, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which the PCX has prepared. On September 30, 2003 the PCX submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The PCX, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its rules governing the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE. Specifically, the PCX proposes to offer an identity order feature to its Equities Trading Permit ("ETP") Holders.<sup>4</sup> In

<sup>7</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 letter from Peter Bloom, Managing Director of Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission dated September 29, 2003 ("Amendment No. 1"). In Amendment No. 1, the PCX replaced its proposed rule change in its entirety.

<sup>4</sup> See PCXE Rule 1.1(n) for the definition of "ETP Holder."

accordance with the proposal, an ETP Holder may affirmatively choose, on an order-by-order basis, to display orders with its unique ETP identifier (hereinafter referred to as the "ETPID"). To facilitate the change, the PCX proposes to amend PCXE Rules 7.7(b) ("Transmission of Bids or Offers") and 7.36(b) ("Order Ranking and Display") to clarify and reconcile when ETP Holders may display their identities. The PCX also wishes to make additional changes to PCXE Rule 7.7(a). The text of the proposed rule change is below. Proposed new language is italicized; deletions are in brackets.

\* \* \* \* \*

Rule 7.7(a). [The 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.

(b) Except as otherwise permitted by these Rules, no ETP Holder shall transmit through the facilities of the Corporation any information regarding a bid, offer, [or] other indication of an order, *or the ETP Holder's identity* to a non-holder of an ETP *or to another ETP Holder until permission to disclose and transmit* such bid, offer, [or] other indication of an order, *or the ETP Holder's identity* has been [disclosed and permission to transmit such information has been] obtained from the originating ETP Holder *or the originating ETP Holder affirmatively elects to disclose its identity.*

\* \* \* \* \*

#### **Order Ranking and Display**

Rule 7.36—No change.

(a)(1)–(a)(2)—No change.

(b) Display. *Except as otherwise permitted by Rule 7.7, [A] all* orders at all price levels in the Display Order Process of the Arca Book shall be displayed to all Users and other market participants on an anonymous basis.

(c)—No change.

\* \* \* \* \*

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change, and discussed any

<sup>6</sup> 15 U.S.C. 78k(a)(1)(B).