

### III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with section 6(b) of the Act<sup>7</sup> in general and furthers the objectives of section 6(b)(5) of the Act.<sup>8</sup> 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.<sup>9</sup>

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,<sup>10</sup> 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.<sup>11</sup>

**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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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.<sup>3</sup> The Commission received one comment letter on the proposal.<sup>4</sup> 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 Users<sup>5</sup> 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 Process<sup>6</sup> of the ArcaEx Book.<sup>7</sup>

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).

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 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).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</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. 48598 (October 7, 2003), 68 FR 59663.

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

<sup>5</sup> See PCXE Rule 1.1(yy) for the definition of "User."

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

<sup>7</sup> See PCXE Rule 1.1(a) for a definition of Arca Book.