

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁹

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Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

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Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. To Amend Its Rules Governing Market-Maker Obligations on the Archipelago Exchange

December 16, 2003.

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 October 21, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the PCX. On December 2, 2003, the PCX filed Amendment No. 1 to the proposed rule change.³ 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 proposes to amend its rules governing Market Maker obligations on the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE. Specifically, the Exchange proposes to modify PCXE Rule 7.25(b) to eliminate the stipulation that Market Makers must become Odd Lot Dealers in the securities in which they are registered. Furthermore, the Exchange proposes to modify PCXE Rule 7.34(b) to eliminate the requirement that Market Makers must maintain one Cleanup Order for all of the securities in which they are registered. The text of the proposed rule change is set forth below. Proposed new

language is in *italics*; proposed deletions are in [brackets].

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Rule 7

Equities Trading

Registration of Odd Lot Dealers

Rule 7.25(a)—No change.

(b) Market Makers Registered in a Security. For each security in which a Market Maker is registered, the Market Maker [must] *may* become an Odd Lot Dealer in that security.

(c)–(e)—No change.

Trading Sessions

Rule 7.34(a)—No change.

(b) *Market Maker Obligations.*

(1)—No change.

(2) Market Makers [must] *may, at their discretion*, maintain one Cleanup Order for [all] *any* securities in which they are registered for each Market Order Auction.

(c)–(f)—No change.

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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 comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

As part of its continuing efforts to enhance participation on the ArcaEx, the PCX is proposing to eliminate the stipulation that Market Makers⁴ must become Odd Lot Dealers⁵ in the securities for which they are registered. In addition, the Exchange is seeking to eliminate the requirement for Market Makers to maintain Cleanup Orders.⁶ The Exchange believes these restrictions currently impose a competitive barrier vis-à-vis other market centers in

attracting Market Maker participation on ArcaEx because competing market centers do not impose such requirements.⁷ Hence, the Exchange believes that removal of these restrictions will place the ArcaEx at competitive parity with other market centers.

Currently, PCXE Rule 7.25(b) requires Market Makers to become Odd Lot Dealers in each security in which they are registered. Once registered, an Odd Lot Dealer is obligated to maintain an Odd Lot Tracking Order⁸ during each day in which the PCXE is open for business for each security in which the Odd Lot Dealer is registered. The Exchange proposes to modify the requirement for all Market Makers to become Odd Lot Dealers making it optional rather than a requirement. The Exchange represents that the overall system impact from elimination of this requirement would be minimal due to the fact that current Market Maker activity on the ArcaEx affects a small number of securities.⁹

Furthermore, pursuant to PCXE Rule 7.34(b), Market Makers are required to maintain one Cleanup Order¹⁰ in all

⁷ See e.g., NASD Rules 4611 and 4612.

⁸ If an unfilled order or portion of an order that enters the Tracking Order Process is an odd lot, ArcaEx would match the order against any Odd Lot Tracking Orders ("OLTO"), using the same rotation process as the Tracking Order Process. An OLTO, which could only be submitted to ArcaEx by a registered Odd Lot Dealer, is a Tracking Order in which: (1) The maximum aggregate size is unlimited; (2) the maximum tradeable size is 99 shares; (3) the price is set at the NBBO; (4) the security is one in which the Odd Lot Dealer is registered as such; and, (5) the instruction would have to be in effect for the duration of Core Trading Hours. See PCXE Rule 7.31(f)(3), 7.31(g), and 7.37(c).

⁹ Currently, odd lots are able to receive execution by matching to other odd lot or round lot orders. Under the proposed rule change, odd lots would be handled in the same manner. Hence, elimination of the requirement for Market Makers to become an Odd Lot Dealer would have minimal impact on how odd lots are treated in the marketplace as odd lots interact with round lot orders on a pure price, time priority basis.

¹⁰ Cleanup Up Orders are only applicable to Market Order Auctions. Cleanup Orders (1) could be submitted only by Market Makers; (2) would have to be submitted to ArcaEx before 6:15 a.m. (Pacific time) and remain in effect until the conclusion of the Market Order Auction; (3) would have to be 2500 shares in size; (4) would have to be entered as both buy or sell orders, provided, however, the Cleanup Order could be executed only on the side of the market opposite the Imbalance; (5) would be executed at the Indicative Match Price as of the time of the Market Order Auction; and (6) would be executed only if: (i) there was an Imbalance of eligible orders at the conclusion of the Market Order Auction, as provided in proposed PCXE Rule 7.35; and (ii) the Imbalance is less than or equal to aggregate size of all Cleanup Orders in the relevant security. If there is an Imbalance and Cleanup Orders would be executed, the market orders which make up the Imbalance would be divided equally among, and allocated to, all Market

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaces the originally filed Form 19b-4 in its entirety.

⁴ See PCXE Rule 1.1(u) (definition of "Market Maker"). See also PCXE Rules 7.20-7.23 relating to the registration and obligations of Market Makers.

⁵ See PCXE Rule 1.1(gg) (definition of "Odd Lot Dealer"). See also PCXE Rule 7.25 relating to the registration of Odd Lot Dealers.

⁶ See PCXE Rule 7.31(u) (definition of "Cleanup Order").