

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51014; File No. SR-PCX-2004-83)

January 10, 2005

Self-Regulatory Organizations; Order Approving Proposed Rule Change, and Amendment No. 1 Thereto, by the Pacific Exchange, Inc. Relating to Changing the Opening Time and the Commencement of the Opening Auction on the Archipelago Exchange

On October 22, 2004, the Pacific Exchange, Inc. (“PCX” or “Exchange”), through its wholly owned subsidiary PCX Equities, Inc. (“PCXE”) submitted to 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 change the opening time and the commencement of the Opening Auction of its facility, the Archipelago Exchange (“ArcaEx”), from 5:00 am (Pacific Time) to 1:00 am (Pacific Time) and modify PCXE Rules 7.34 and 7.35, respectively. On November 22, 2004, the PCX submitted Amendment No. 1 to the proposed rule change.³ The Federal Register published the proposed rule change for comment on December 6, 2004.⁴ The Commission received no comments on the proposed rule change, as amended.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced and superceded the original filing in its entirety.

⁴ Securities Exchange Act Release No. 50756 (November 30, 2004), 69 FR 70489.

applicable to a national securities exchange.⁵ In particular, the Commission believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5),⁷ in particular, because it 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 mechanisms of a free and open market and to protect investors and the public interest. The Commission believes that the proposed rule change is reasonably designed to provide additional liquidity for customers seeking to participate in the Nasdaq-listed and exchange-listed markets by extending the ArcaEx's Opening Auction during the hours before the primary markets open for trading. The Commission believes that having a PCX Market Management staff member on-site at the ArcaEx facility beginning at 1:00 am (Pacific Time), in conjunction with the Exchange's employment of third-party data vendors, should enable the Exchange to coordinate its trading halts with those that are instituted for regulatory reasons by the primary markets, including the foreign markets with whom the PCX represents it is establishing contacts. In addition, this arrangement should permit the Exchange to exercise its discretion to institute a trading halt on ArcaEx when the trading halt is for a non-regulatory reason.

Further, the Commission recognizes that the Exchange has represented that the PCX Market Management staff member will be able to monitor the quoting and trading activity of its

⁵ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

Users⁸ during that time period. In addition, the Commission notes that the Exchange has represented that it will not begin trading at 1:00 am (Pacific Time) until the Securities Information Processors (“SIPs” are ready to accommodate quoting and trading beginning at 1:00 am (Pacific Time) and have provided ArcaEx with notification that they are prepared to disseminate quotes and trades at that time. The Commission believes that this pre-condition to commencing trading a 1:00 am (Pacific Time) is appropriate because the quote and trade data disseminated by SIPs are fundamental to market transparency.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change, as amended, (SR-PCX-2004-83) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

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Assistant Secretary

⁸ See PCXE Rule 1.1(yy).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).