

Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NSCC–2003–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at www.nscc.com/legal/.

All submissions should refer to File No. SR–NSCC–2003–15 and should be submitted by February 6, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49061; File No. SR–NSCC–2003–03]

Self-Regulatory Organizations; The National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Execution Time for CNS Buy-Ins

January 12, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on March 24, 2003, the National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) and on March 14, 2003, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The

Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The proposed rule change would allow NSCC to amend Procedures VII and X to allow NSCC to determine the timeframe for the execution of continuous net settlement (“CNS”) buy-ins from time to time.

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

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.²

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

The purpose of the proposed rule change is to modify NSCC Procedures VII.J. “CNS Accounting Operation, Recording of CNS Buy-Ins” and X.A.1. “Execution of Buy-Ins, CNS System, Equity Securities and Corporate Debt Securities” with regard to the execution time of CNS buy-ins.

Except with respect to securities subject to a voluntary corporate reorganization, a member having a long CNS position at the end of any day may submit to NSCC a notice of intention to buy-in (“buy-in notice”) specifying a quantity of securities (not exceeding such long CNS positions) the member intends to buy-in (“buy-in position”). The day the CNS buy-in notice is submitted is referred to as N, and N+1 and N+2 refer to the succeeding days. Each day commences in the evening and includes both an evening and daytime allocation. The CNS buy-in position is given high priority for allocation through N+2.

Pursuant to NSCC Procedure VII, if a CNS buy-in position is not satisfied at the end of the day cycle on N+2, the CNS buy-in may be executed. In effect, members have from the completion of the day cycle on N+2 to the close of the markets to execute the CNS buy-in.

Operationally, as the day cycle generally completes at 3:10 p.m. eastern standard time (“EST”), participants face a narrow timeframe within which they may execute CNS buy-ins. In the event that settlement and recycle times are extended or delayed, that window of time is further reduced.

At the request of participants and after consultation with the Securities Industry Association Buy-In Committee, NSCC proposes to modify Procedures VII and X to permit the execution of CNS buy-ins if by 3 p.m. EST or such earlier time as established by NSCC with five business days notice because of market events (e.g., days the marketplaces close early). NSCC will advise participants of any earlier execution time via important notice five business days in advance of its effectiveness. This change in time is not intended to be a requirement for executions, but is to serve as an opportunity for participants to execute CNS buy-ins in a more efficient manner.

NSCC believes that the proposed rule change is consistent with Section 17A of the Act³ and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions by providing members sufficient time to execute CNS buy-ins.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

¹⁵ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by NSCC.

³ 15 U.S.C. 78q-1.

(B) institute proceedings to determine whether the proposed rule change 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 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NSCC–2003–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC or on NSCC's Web site at <http://www.nscc.com/legal/>. All submissions should refer to File No. SR–NSCC–2003–03 and should be submitted by February 6, 2004.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49053; File No. SR–PCX–2003–63]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Post-Trade Anonymity to Its ETP Holders

January 12, 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 November 12, 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 prepared by the Exchange. On January 9, 2004, the Exchange submitted 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 Exchange is proposing to provide post-trade anonymity to its ETP Holders and to modify PCXE Rule 7.41 accordingly. The text of the proposed rule changes is available at the PCX and at the Commission.

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 has prepared summaries, set forth in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Mai S. Shiver, Acting Director of Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated January 9, 2004 (“Amendment No. 1”). In Amendment No. 1, the PCX explained that it currently has rules in place to assure that ETP Holders maintain recordkeeping requirements under the Act. The PCX also clarified that under the PCX's current procedures for adjusting trades, ETP Holders do not need to know the identity of their contra-party in order to adjust an erroneous trade.

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

The Exchange is proposing to extend anonymity on its Archipelago Exchange (“ArcaEx”) through to post settlement. Currently, Users⁴ may display and execute orders on an anonymous basis pursuant to PCXE Rules 7.36 and 7.37, respectively. Accordingly, during the execution process, Users' orders are executed without knowledge of the contra-party's identity. At the end of the trading day, the contra-party's identity on a trade-by-trade basis is revealed to ETP Holders⁵ for their respective trades through web-based reports. Therefore, anonymity is maintained through execution, but not through the end-of-day settlement process.

The Exchange proposes to modify PCXE Rule 7.41 to clarify that the contra-party to the trade will not be revealed except in specific instances as discussed below. The Exchange believes that due to interest expressed by ETP Holders and the National Association of Securities Dealers, Inc.'s recent approval to implement post-trade anonymity,⁶ it is essential for ArcaEx to offer its Users anonymity through the settlement process. To facilitate this, ArcaEx has worked with the National Settlement Clearing Corporation (“NSCC”) to accommodate anonymity on a post-trade basis. NSCC will assign ArcaEx trades with a unique clearing number. ArcaEx will submit clearing records to NSCC, which, pursuant to its rules,⁷ will report trades executed on ArcaEx back to its clearing firms utilizing the unique clearing number for the contra-party rather than reveal that contra-party's acronym.

To address risk management concerns, ArcaEx will provide ETP Holders with intra day concentration reports that reflect, on an aggregate basis, the share volume and dollar amount executed by each contra-party without identifying the contra-party. In addition, ArcaEx will provide the contra-party's identity when required for legal or regulatory purposes.

⁴ See PCXE Rule 1.1(yy) for the definition of “User.”

⁵ See PCXE Rule 1.1(n) (definition of “ETP Holder”).

⁶ See Securities Exchange Act Release No. 48088 (June 25, 2003), 68 FR 39605 (July 2, 2003) (SR–NASD–2003–85).

⁷ See Securities Exchange Act Release No. 48526 (September 23, 2003), 68 FR 56367 (September 30, 2003) (SR–NSCC–2003–14).