

*Commission. Notwithstanding the fact that NFA may enter into one or more regulatory services agreements regarding security futures, NFA shall retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities under the Securities Exchange Act of 1934, and any such regulatory services agreement shall so provide.*

\* \* \* \* \*

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

NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants and others. The text of these statements may be examined at the places specified in Item IV below. NFA has 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

Under the Act, NFA is required, as a limited purpose national securities association, to adopt and enforce SFP sales practice rules for notice-registered broker-dealers. Pursuant to CFTC Regulation 1.52(b),<sup>6</sup> NFA and the futures exchanges have entered into a plan that delegates auditing responsibilities for joint members to a designated futures self-regulatory organization ("DSRO"). NFA is not the DSRO for twenty-one exchange-member FCMs that are notice-registered as broker-dealers and, therefore, NFA is not responsible for auditing the futures activities of these firms.

NFA is, however, responsible under the Act for auditing the security futures activities of these notice-registered broker-dealers. In order to minimize the number of audits these firms are subject to, NFA Bylaw 1508 authorizes the NFA to enter into a regulatory services agreement with the futures exchanges that audit them. The bylaw also provides that NFA retains full responsibility for its obligations under the Exchange Act. If the futures exchanges do not conduct the appropriate audit steps or report potential violations to NFA, then NFA will be responsible to the Commission for those failures.

<sup>6</sup> 17 CFR 1.52(b).

#### 2. Statutory Basis

The rule change is authorized by, and consistent with Section 15A(k) of the Act.<sup>7</sup>

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

NFA believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act and the CEA. In fact, NFA believes that the rule change will lessen the burdens on competition by avoiding duplicative examinations of notice-registered broker-dealers.

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

NFA did not publish the rule change to the membership for comment. NFA did not receive comment letters concerning the rule change.

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

The proposed rule change became effective on September 17, 2004. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.<sup>8</sup>

## 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. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR-NFA-2004-01 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

<sup>7</sup> 15 U.S.C. 78o-3(k).

<sup>8</sup> 15 U.S.C. 78s(b)(1). For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on September 27, 2004, the date NFA filed Amendment No. 1.

All submissions should refer to File Number SR-NFA-2004-01. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 filing also will be available for inspection and copying at the principal office of NFA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NFA-2004-01 and should be submitted on or before October 25, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. E4-2467 Filed 10-1-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50460; File No. SR-PCX-2004-77]

## Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto To Clarify Routing Away Practices

September 28, 2004.

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 August 30, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary PCX Equities,

<sup>1</sup> 17 CFR 200.30-3(a)(75).

<sup>2</sup> 15 U.S.C. 78s(b)(1)

<sup>2</sup> 17 CFR 240.19b-4.

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. The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. On September 1, 2004, the PCX filed Amendment No. 1 to the proposed rule change.<sup>5</sup> The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend PCXE Rule 7.37 (“Order Execution”), which governs the Archipelago Exchange (“ArcaEx”), an equities trading facility of PCXE, to apply the restriction on the size of an order routed outside ArcaEx only to Intermarket Trading System “ITS” Eligible Listed securities, and not to over-the-counter “OTC” securities. The text of the proposed rule change appears below. New text is in *italics*. Deleted text is in brackets.

\* \* \* \* \*

#### **Rule 7**

##### **Equities Trading Order Execution**

\* \* \* \* \*

Rule 7.37. (a)–(c) No change.

(d) Step 5: Routing Away.

(1)–(2)—No change.

(A)(i) The order shall be routed, either in its entirety or as component orders, to another market center or market participant as a limit order:

(a) *for ITS Eligible Listed Securities—equal to the price and no greater than the size of the quote published by the market center or market participant[.]; and*

(b) *for OTC securities—equal to the price of the quote published by the market center or market participant.*

The remaining portion of the order, if any, shall be ranked and displayed in the Arca Book in accordance with the

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>4</sup> 17 CFR 204.19b-4(f)(6).

<sup>5</sup> See letter from Mai S. Shiver, Director, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 31, 2004. Amendment No. 1 replaced the proposed rule change in its entirety. For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on September 1, 2004, the date the PCX filed Amendment No. 1.

terms of such order under Rule 7.36 and such order shall be eligible for execution under Rule 7.37.

(ii)—No change.

(B)—(E)—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 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 PCX has 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**

The Commission recently approved a rule change to PCXE Rule 7.37 that clarified ArcaEx’s execution rules related to routing to away markets.<sup>6</sup> Specifically, the rule change amended PCXE Rule 7.37(d)(2)(A) to require that the size of orders routed outside of ArcaEx to another market center or market participant be no greater than the size of the quote published by that away market center or market participant. According to the PCX, this restriction is consistent with Section 6(b)(iii) of the ITS Plan and as a result, the Exchange proposes to clarify that the restriction only applies to ITS Eligible Securities. The Exchange does not believe that PCXE Rule 7.37 should apply to OTC securities as there is no intermarket linkage plan for OTC securities that places restrictions on the size of orders routed to an outside market center or market participant. The Exchange further believes this clarification is necessary in light of the prevalence of reserve orders in the OTC market in which the size available for execution is greater than the displayed quote size. By routing away an order of a size greater than the displayed quote on the outside market, ArcaEx may be able to fill larger orders.

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with

<sup>6</sup> See Securities Exchange Act Release No. 48934 (December 16, 2003), 68 FR 74690 (December 24, 2003) (File No. SR-PCX-2003-54).

Section 6(b)<sup>7</sup> of the Act, in general, and further the objectives of Section 6(b)(5),<sup>8</sup> 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 to and perfect the mechanisms of a free and open market, and to protect investors and the public interest. In addition, the Exchange believes the proposed rule is consistent with provision of Section 11A(a)(1)(B) of the Act,<sup>9</sup> which states that new data processing and communications techniques create the opportunity for more efficient and effective market operations.

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

The Exchange does not believe that the proposed rule change 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*

Written comments were neither solicited nor received with respect to the proposed rule change.

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

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder<sup>11</sup>. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 30-day operative

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

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

<sup>9</sup> 15 U.S.C. 78k-1(a)(1)(B).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

delay to implement the proposed rule change. The PCX contends that these proposed rules are non-controversial as the Exchange is seeking to clarify its rules to conform to current practices for OTC securities. As a result, the Exchange believes that the proposed rule change does not raise any new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition for the proposed rule change to become immediately operative upon filing. The Commission believes that waiving the 30-day operative period is consistent with the protection of investors and the public interest and, therefore, has determined to allow the proposed rule change to become effective and operative as of the date of the filing with the Commission.<sup>12</sup>

#### 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. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR-PCX-2004-77 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-PCX-2004-77. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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

<sup>12</sup>For purposes of waiving the operative period date of this proposal only, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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 Room. Copies of the filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PCX-2004-77 and should be submitted on or before October 25, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SMALL BUSINESS ADMINISTRATION

##### Reporting and Recordkeeping Requirements Under OMB Review

**AGENCY:** Small Business Administration.

**ACTION:** Notice of reporting requirements submitted for OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATES:** Submit comments on or before November 3, 2004. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

*Copies:* Request for clearance (OMB 83-1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

**ADDRESSES:** Address all comments concerning this notice to: *Agency Clearance Officer*, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and

*David\_Rostker@omb.eop.gov*, fax number 202-395-7285 Office of Information and Regulatory Affairs, Office of Management and Budget.

<sup>13</sup>17 CFR 200.30-3(a)(12).

**FOR FURTHER INFORMATION CONTACT:** Jacqueline White, Agency Clearance Officer, (202) 205-7044.

**SUPPLEMENTARY INFORMATION:** *Title:* Notice of Award and Grant/Cooperative Agreement Cost Sharing Proposal.

*Form No's:* 1222 and 1224.

*Frequency:* On Occasion.

*Description of Respondents:*

Participating Colleges.

*Responses:* 2,256.

*Annual Burden:* 202,080.

**Jacqueline K. White,**

*Chief, Administrative Information Branch.*

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#### SMALL BUSINESS ADMINISTRATION

##### Region II Buffalo District Advisory Council; Public Meeting

The U.S. Small Business Administration Region II Advisory Council located in the geographical area of Buffalo, New York, will hold a public meeting at 10 a.m. eastern time on Wednesday, October 20, 2004, at the Buffalo Club, 388 Delaware Avenue, Buffalo, New York, to discuss such matters that may be presented by members, and staff of the U.S. Small Business Administration, or others present. Anyone wishing to make an oral presentation to the Board must contact Franklin J. Sciortino, District Director, in writing by letter or fax no later than Friday, October 15, 2004, in order to be put on the agenda. Franklin J. Sciortino, District Director, U.S. Small Business Administration, 1311 Federal Building, 111 West Hurton Street, Buffalo, NY 14202. Telephone (716) 551-4301 or Fax (716) 551-4418.

**Matthew K. Becker,**

*Committee Management Officer.*

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#### SMALL BUSINESS ADMINISTRATION

##### National Environmental Policy Act Procedures

**AGENCY:** U.S. Small Business Administration (SBA).

**ACTION:** Notice of proposed change in procedures; notice of extension of comment period.

**SUMMARY:** SBA published a Notice of a proposed change in procedures on August 6, 2004 seeking comments on its proposed revisions to its procedures implementing the National Environmental Policy Act (NEPA) specifically relating to loans made