

contends, therefore will continue to execute orders at the BBO price voluntarily, as a means of maintaining superior execution quality statistics.

Under the proposed revision of Article XX, Rule 37(a), the specific provisions of the BEST Rule would be deleted. Instead, the specialist's execution obligation would be described in more general terms. Under the proposed new standard, a CHX specialist would, in executing an order manually, be obligated to "use reasonable diligence to ascertain the best available price for the subject security so that the resultant execution price is as favorable to the order sender as possible under prevailing market conditions." Among the factors that will be considered by the Exchange's Department of Market Regulation in determining whether a specialist has used "reasonable diligence" are: (a) The character of the market for the security, e.g., price, volatility, relative liquidity, and pressure on available communications; and (b) the size and type of transaction.<sup>6</sup>

Significantly, although this standard may appear more general in its terms, it does not remove a CHX specialist's obligation to provide a timely best execution for each order, nor does it modify any other specialist obligations set forth in Article XXX of the CHX Rules. The CHX Department of Market Regulation has indicated that it will continue its surveillance of order executions to ensure that CHX specialists meet all of their obligations to each order.

It is also important to note that the CHX rules (specifically, CHX Article XX, Rule 37(b)) would continue to require execution of the BBO price for orders that are automatically executed within the Exchange's MAX<sup>®</sup> system. The Exchange represents that there is no proposal forthcoming to modify automatic execution price guarantees.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).<sup>7</sup> In particular, the proposed rule is consistent with Section 6(b)(5) of the Act in that it is designed to promote just

<sup>6</sup> The proposed new standard is substantially similar to Rule 2320 ("Best Execution") of the National Association of Securities Dealers ("NASD"). However, the NASD has filed a proposed rule change to amend Rule 2320. See File No. SR-NASD-2004-26.

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

and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.<sup>8</sup>

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

No written comments were either solicited or received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 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 the proposed rule change, or

(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, as amended 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>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CHX-2004-03 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-CHX-2004-03. 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, 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of the CHX. 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-CHX-2004-03 and should be submitted on or before January 12, 2005.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50844; File No. SR-NYSE-2004-53]

### Self Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Relating to a Fee for the NYSE Alerts Datafeed

December 13, 2004.

On September 17, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 establish a fee of \$500 per month for a

<sup>9</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>8</sup> 15 U.S.C. 78f(b)(5).

customer's receipt of the NYSE Alerts datafeed. On October 15, 2004, the NYSE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On October 28, 2004, the NYSE filed Amendment No. 2 to the proposed rule change.<sup>4</sup>

The proposed rule change, as amended, was published for comment in the **Federal Register** on November 12, 2004.<sup>5</sup> The Commission received no comments on the amended proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>6</sup> and, in particular, the requirements of Section 6 of the Act<sup>7</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with Section 6(b)(4) of the Act<sup>8</sup> in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities.

The Commission notes that the NYSE is amending its fee schedule to incorporate a \$500 fee for its NYSE Alerts datafeed, which will provide real-time information relating to MOC Market Imbalances, Delayed Openings/Trading Halts, ITS Pre-Opening Indications/Trading Range Indications, Trading Collar Messages, and Circuit Breaker Messages. The Commission further notes that the information that would be included in the NYSE Alerts datafeed is currently available and would continue to be available to the public through the Consolidated Tape Association network and through various news services. Vendors and investors who choose to subscribe to NYSE Alerts would be paying for the convenience of having this currently available public information repackaged into a single datafeed. The Commission therefore believes that the proposed fee is reasonable and finds that the proposed rule change, as amended, is consistent with the Act.

<sup>3</sup> See letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 14, 2004 ("Amendment No. 1").

<sup>4</sup> See letter from Mary Yeager, Assistant Secretary, NYSE to Nancy Sanow, Assistant Director, Division, Commission, dated October 27, 2004 ("Amendment No. 2").

<sup>5</sup> See Securities Exchange Act Release No. 50639 (November 5, 2004), 69 FR 65488.

<sup>6</sup> In approving this proposed rule change, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

*It is therefore ordered*, pursuant to Section 19(b)(s) of the Act<sup>9</sup>, that the proposed rule change (File No. SR-NYSE-2004-53), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50847; File No. SR-PCX-2002-57]

### Self-Regulatory Organizations; Notice of Withdrawal of Proposed Rule Change by the Pacific Exchange, Incorporated Relating to the Implementation of a New Order Audit Trail System

December 14, 2004.

On August 9, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> to adopt new rules relating to the creation of an order audit trail system called Electronic Order Capture System ("EOC"). On July 28, 2003, the Exchange filed Amendment No. 1 to the proposed rule change. On July 30, 2003, the Exchange submitted Amendment No. 2 to the proposed rule change. On August 7, 2003, the proposed rule change, as amended, was published for comment in the **Federal Register** to solicit comment for interest persons.<sup>3</sup> No comments were received. Subsequently, on October 9, 2003 and October 14, 2003, the Exchange submitted Amendment Nos. 3 and 4 to the proposed rule change.

On December 14, 2004, the Exchange withdrew the proposed rule change and all amendments thereto.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</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. 48264 (July 31, 2003), 68 FR 47124.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50868; File No. SR-PCX-2004-59]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to a New Order Modifier Entitled "Proactive if Locked Reserve"

December 16, 2004.

On July 1, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE"), 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 amend its rules governing the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE, by adding new processing capability for ArcaEx Reserve Orders in situations where a Reserve order in an exchange-listed security is locked by another market. On October 26, 2004, the PCX submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On October 28, 2004, the PCX submitted Amendment No. 2 to the proposed rule change.<sup>4</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on November 15, 2004.<sup>5</sup> The Commission received no comments on the proposal.

The Exchange proposes to add a new order modifier entitled "Proactive if Locked Reserve" as an additional

<sup>4</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 letter from Steven B. Matlin, Senior Counsel, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 25, 2004, and accompanying Form 19b-4 ("Amendment No. 1"). Amendment No. 1 replaced and superseded the originally filed proposed rule change.

<sup>4</sup> See letter from Steven B. Matlin, Senior Counsel, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated October 25, 2004 ("Amendment No. 2") Amendment No. 2 made technical corrections to the proposed rule text of the proposed rule change, as amended.

<sup>5</sup> See Securities Exchange Act Release No. 50645 (November 5, 2004), 69 FR 65670.