

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

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## SECURITIES AND EXCHANGE COMMISSION

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### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Eligibility of Timed Orders During the Opening Auction and Market Order Auction, Amending PCXE Rules 7.34 and 7.35

March 6, 2003.

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 March 3, 2003, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II, below, which the PCX has prepared. The Commission is publishing this notice 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 PCX, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its rules governing the Archipelago Exchange ("ArcaEx"), the PCXE's equities trading facility, by: (1) Amending PCXE Rule 7.34(d) to clarify that a specific type of Limited Price Order; namely a Timed Order<sup>3</sup> designated as good from 5 a.m. (Pacific Time) or good from 6:30 a.m. (Pacific Time), will be excluded from eligibility for execution during the Opening Auction and Market Order Auction, respectively; and (2) amending PCXE Rule 7.35(a) through (c) to exclude specified Timed Orders during the applicable auctions. The text of the proposed rule change is below. New text is italicized.

#### Rule 7—Equities Trading

##### Orders and Modifiers

##### Trading Sessions

Rule 7.34(a)–(c)—No change.

(d) Order Permitted in Each Session.

(1) During the Opening Session:

(A)–(F)—No change.

(G) *Limited Price Orders are eligible for execution during the Opening Session; provided, however, a Timed Order designated for the Opening Session and designated as good from 5 am (Pacific Time) is not eligible for execution during the Opening Auction. Similarly, a Timed Order designated for the Opening Session and designated as good from 6:30 am (Pacific Time) is not eligible for execution during the Market Order Auction*

(H)—No change.

(2)–(3)—No change.

(e)–(f)—No change.

##### Opening Session Auctions

Rule 7.35(a) Order Entry and Cancellation Before Opening Auction

(1)—No change.

(2) Only Limited Priced Orders designated for the Opening Session will be eligible for the Opening Auction. *However, a Limited Price Order designated for the Opening Session and entered as a Timed Order good from 5 am (Pacific Time), is not eligible for execution during the Opening Auction. Market orders entered before the Opening Auction or during the Opening Session will participate in the Market Order Auction. However, a Limited Price Order designated for the Opening Session and entered as a Timed Order good from 6:30 am (Pacific Time), is not eligible for execution during the Market Order Auction. Limited Price Orders, including Timed Orders, designated for the Core Trading Session and not designated for the Opening Session will become eligible for execution at the commencement of the Market Order Auction pursuant to Rule 7.35(c).*

(3)–(4)—No change.

(b) Opening Auction.

(1) At 5 am (Pacific Time), Limited Priced Orders designated for the Opening Session are matched and executed in the Opening Auction; *provided, however, a Limited Price Order designated for the Opening Session and entered as a Timed Order good from 5 am (Pacific Time), is not eligible for execution during the Opening Auction.*

(2)–(3)—No change.

(4) *A Limited Price Order designated for the Opening Session and entered as a Timed Order good from 6:30 am (Pacific Time) is not eligible for*

*execution during the Market Order Auction.*

(c)–(f)—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 had received. 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 those statements.

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

###### 1. Purpose

ArcaEx commenced operations on March 22, 2002, replacing the PCXE's traditional trading floor facilities. As part of its continuing review of the system's functionality and its duty to ensure the reporting of current, accurate, and consistent information regarding the Indicative Price Match<sup>4</sup> and Imbalances<sup>5</sup> on ArcaEx, the PCXE proposes to amend its rule to exclude Timed Orders designated as good from 5 a.m. (Pacific Time) or 6:30 a.m. (Pacific Time) from execution during the Opening Auction and Market Order Auction, respectively.

ArcaEx operates three trading sessions each day the PCXE is open for business.<sup>6</sup> The proposed rule change concerns only the Opening Session. The Opening Session begins at 5 a.m. (Pacific Time) and concludes at 6:30 a.m. (Pacific Time) with the

<sup>4</sup> PCXE Rule 1.1(r) provides, in part: "[f]or purposes of the Opening Auction [and] the Market Auction, as the case may be, \* \* \* the term 'Indicative Match Price' shall mean for each security (1) the price at which the maximum volume of shares are executable; or (2) if there are two or more prices at which the maximum volume of shares are executable, the price that is closest to the closing price of the previous day's normal market hours \* \* \* as determined by the Consolidated Tape will establish the opening price, provided that such price would trade through an eligible Limited Price Order designated for such an auction, then the opening price will occur at the best price level available where no trade through occurs."

<sup>5</sup> PCXE Rule 1.1(q) provides, in part: "[f]or purposes of the Opening Auction [and] the Market Auction \* \* \* as the case may be, the term 'Imbalance' shall mean the number of buy or sell shares that can not be matched with other shares at the Indicative Match Price at any given time."

<sup>6</sup> The three trading sessions are (1) the Opening session; (2) the Core Session; and (3) the Late Trading Session. See PCXE Rule 7.34(a).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See PCXE Rule 7.31(q) (definition of a "Timed Order").