

conditions in which a Passive Discretionary Order and Discretion Limit Order would be routed to an away market participant's quote. Passive Discretionary Orders would be routed away only if the displayed price is marketable against an away market participant. Discretion Limit Orders would be routed away only if the displayed share size of such order is equal to or less than the displayed share size of the away market participant.

Several pricing scenarios have been added to the Working Order Process regarding incoming marketable orders that could be matched against a Passive Discretionary Order. First, for Nasdaq securities, if the ArcaEx BBO is outside the NBBO and a Passive Discretionary Order(s) within the Working Order Process has a discretionary price worse than the NBBO, then the incoming order would execute against such Passive Discretionary Order(s) at the price of the incoming order or the displayed price of the Discretionary Order(s), whichever is better. Second, for Nasdaq securities, if the ArcaEx BBO is outside the NBBO and a Passive Discretionary Order(s) within the Working Order Process has a discretionary price equal to or better than the NBBO, then the incoming order would execute against such Passive Discretionary Order(s) pursuant to current PCXE Rule 7.37(b)(2)(A)(ii). Finally, for ITS Trade-Through Exempt Securities (as defined in PCXE Rule 7.37), if the ArcaEx BBO is outside the NBBO and a Passive Discretionary Order(s) within the Working Order Process has a discretionary price worse than the NBBO by three cents (\$0.03) or less, the incoming order would execute against such Passive Discretionary Order(s) at the price of the incoming order or the displayed price of the Discretionary Order(s), whichever is better.

D. Technical Changes

The Exchange has proposed to adopt several minor technical changes throughout PCXE Rules 1.1 and 7.18 to conform to the Nasdaq UTP Plan, which extends UTP to Nasdaq SmallCap securities. Accordingly, the Exchange is proposing to delete references to the term "Nasdaq/NM Security" and replacing it with "Nasdaq Security." In addition, several definitions contained in PCXE Rule 1.1 are being amended to reflect the change in name of the Nasdaq UTP Plan. Finally, current PCXE Rule 1.1(jj), which defines the term "OTC/UTP Primary Market," is being amended to reflect that the Listing Market, rather than the Primary Market, would have the authority to call a Regulatory Halt pursuant to PCXE Rule 7.18(c). A

definition of "OTC/UTP Listing Market" is being adopted from the Nasdaq UTP Plan.²¹

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether Amendment No. 2 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. 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 will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to Amendment No. 2 of File No. SR-PCX-2002-75 and should be submitted by April 3, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds, for the reasons discussed below, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the PCX.²² The Commission finds that the proposed rule change is consistent with requirements of section 6(b)(5) of the Act²³ and the objectives of section 11A(a)(2) of the Act.²⁴ Section 6(b)(5) requires, among other things, that the rules of a national securities exchange be designed to facilitate transactions in securities and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Section 11A(a)(2) of the Act authorizes the Commission to establish a national market system for securities, which should include the establishment of new data processing and communications techniques.²⁵

In proposing to establish new order types on ArcaEx, PCX seeks to provide

market participants with more choices that will permit a more accurate representation of their trading interest on its electronic auction trading facility. In the Commission's view, the proposed order types could provide a new and advanced way for sophisticated trading interests and strategies to be represented and executed on ArcaEx. Further, the Commission believes that by amending the rules to include pricing and execution scenarios for the new order types in the Working Order Process the proposed rule change should assist Users in effectuating such trading interests and strategies. The Commission believes that the implementation of the new order types may enhance the ability of investors to represent their trading interest more completely than is currently possible on ArcaEx. In addition, the new order types may facilitate enhanced order interaction and foster price competition. The depth and liquidity of the market on ArcaEx could increase as a result of the enhanced interest and competition on ArcaEx. The Commission believes that, such order types could assist ArcaEx in attracting new market participants and to increase order flow to the PCXE, which in turn could promote greater competition among market centers.

Pursuant to PCXE Rule 7.37 quotes and orders on the ArcaEx, except those in ITS Trade-Through Exempt Securities, must be executed at a price equal to or better than the NBBO, unless ArcaEx has routed the order to an away market at the NBBO. Under the proposal, executions in IOC, NOW, PNP, Passive Discretionary, Discretion Limit, IOC Cross, and PNP Cross orders for Nasdaq securities would also be included in the ArcaEx exception to the PCXE Rule 7.37 price protection provision. Specifically, executions in such orders in Nasdaq securities could be effected at a price no worse than the ArcaEx BBO. The Commission notes that currently there is no trade-through prohibition for Nasdaq securities because the Nasdaq UTP Plan does not provide for intermarket linkages between its participants like the listed securities market.²⁶ The Commission believes that without the presence of an intermarket linkage for Nasdaq UTP Plan participants it would be impracticable for PCXE to attempt to provide intermarket price protection for the above-mentioned orders in Nasdaq securities. Nonetheless, the Commission emphasizes that this approval order does not diminish investor protections, and that such orders in Nasdaq

²¹ See *supra* note 6.

²² In approving this rule, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²³ 15 U.S.C. 78f(b)(5).

²⁴ 15 U.S.C. 78k-1(a)(2).

²⁵ 15 U.S.C. 78k-1(a)(2).

²⁶ See *supra* note 6.