

Exchange also believes that these proposed orders are sophisticated types of orders, and persons using these orders will understand the benefits and limitations of their use. Moreover, such orders are still subject to a broker's duty of best execution for its customer.

### 3. Working Order Process

The Exchange proposes the following conforming changes to certain provisions of the Working Order Process set forth in PCXE rule 7.37(b)(2):

a. *Current PCXE Rule 7.37(b)(2)(C)*—This section has been modified to clarify the 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.

b. *Proposed PCXE Rule 7.37(b)(2)(A)(iv)*—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 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 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 rule 7.37(b)(2)(A)(ii). Finally, for ITS Trade-Through Exempt Securities (as defined in rule 7.37), if the 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 Orders(s), whichever is better.

### 4. Technical Changes

Minor technical changes have been made 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 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.<sup>19</sup>

The Exchange believes that the implementation of the aforementioned order types will facilitate enhanced order interaction and foster price competition. The proposal also promotes a more efficient and effective market operation, and provides market participants with greater flexibility in determining how their orders would be executed.

### Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>20</sup> in general, and further the objectives of section 6(b)(5),<sup>21</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 and perfect the mechanisms of a free and open market and to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with provisions of section 11A(a)(1)(B) of the Act,<sup>22</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 on the proposed rule change were neither solicited nor 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 longer 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 PCX consents, the Commission will:

(A) By order approve such 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. 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 filings will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-2002-75 and should be submitted by February 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>23</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>19</sup> *Id.*

<sup>20</sup> 15 U.S.C. 78f(b).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> 15 U.S.C. 78k-1(a)(1)(B).

<sup>23</sup> 17 CFR 200.30-3(a)(12).