

("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 26, 2003, the Pacific Exchange, Inc. ("PCX") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III 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 equities trading facility of PCXE. With this filing, PCX proposes to amend its rules related to Market Order processing for exchange-listed securities and Nasdaq securities.<sup>3</sup> Specifically, the proposed rule change would set forth: (1) The processing of Market Orders for exchange-listed securities and Market Orders for Nasdaq securities during the Market Order Auction ("MOA") and transition to the Core Trading Session;<sup>4</sup> and (2) the circumstances under which Market Orders for exchange-listed securities would be converted into Primary Only Orders ("PO Orders")<sup>5</sup> following the conclusion of the MOA.

The text of the proposed rule change is below. Proposed additions are in italics and proposed deletions are in [brackets].

PCX Equities, Inc.

Rule 7; Equities Trading; Opening Session Auctions

Rule 7.35(a)-(d)—(No change.)

Rule 7.35(e) Transition to Core Trading Session.

(1) *For exchange-listed securities:*

(A) Limited Price Orders entered before 6:28 am (Pacific Time) shall participate in the Market Order Auction. Limited Price Orders designated for the Core Trading Session entered after 6:28

am (Pacific Time) shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.

(B) [(2)] Market orders entered after 6:28 am (Pacific Time) and before 6:30 am (Pacific Time), which are eligible for either the Market Order Auction or the Core Trading Session, shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later, unless otherwise provided in Rule 7.35(c)(2)(C), Rule 7.35(e)(1)(E) or Rule 7.35(e)(1)(F).

(C) [(3)] Stop Orders entered before or during the Opening Session become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.

(D) *Market orders entered before 6:28 am (Pacific Time), but unmatched during the Market Order Auction, shall be converted into PO Orders at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later, and thereafter routed to the primary market for execution.*

(E) *Market orders entered on the same side of the Imbalance between 6:28 am (Pacific Time) and the conclusion of the Market Order Auction are eligible for the Market Order Auction and shall be converted into PO Orders at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later, and thereafter routed to the primary market for execution.*

(F) *If no Imbalance exists between 6:28 am (Pacific Time) and the conclusion of the Market Order Auction, any market orders entered during that time are ineligible for the Market Order Auction and shall be converted into PO Orders at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later, and thereafter routed to the primary market for execution.*

(G) *Market orders entered at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever comes later, but before the primary market has opened, shall be converted into PO Orders and thereafter routed to the primary market for execution.*

(2) *For Nasdaq securities:*

(A) *Limited Price Orders entered before 6:28 am (Pacific Time) shall participate in the Market Order Auction. Limited Price Orders designated for the Core Trading Session entered after 6:28 am (Pacific Time) shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.*

(B) *Market orders entered after 6:28 am (Pacific Time) and before 6:30 am (Pacific Time), which is eligible for*

*either the Market Order Auction or the Core Trading Session, shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later, unless otherwise provided in Rule 7.35(c)(2)(C), Rule 7.35(e)(1)(E) or Rule 7.35(e)(1)(F).*

(C) *Stop Orders entered before or during the Opening Session become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.*

(D) *Market orders entered before 6:28 am (Pacific Time), but unmatched during the Market Order Auction, shall become eligible for execution in the Core Trading Session at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.*

(E) *Market orders entered on the same side of the Imbalance between 6:28 am (Pacific Time) and the conclusion of the Market Order Auction are ineligible for the Market Order Auction and shall be queued until 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later, at which time the queued market orders shall become eligible for execution during the Core Trading Session.*

(F) *If no Imbalance exists between 6:28 am (Pacific Time) and the conclusion of the Market Order Auction, any market orders entered during that time shall be queued until 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later, at which time those market orders shall become eligible for execution during the Core Trading Session.*

(f)—(No change.)

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### **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 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**

With this filing, PCX proposes to amend its rules related to Market Order

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

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

<sup>3</sup> See PCXE Rule 1.1(aa) for the definition of "Nasdaq Security."

<sup>4</sup> ArcaEx operates three trading sessions each day the PCXE is opened for business. The trading sessions are: (1) Opening Session; (2) the Core Session; and (3) the Late Trading Session. See PCXE Rule 7.34(a). The MOA occurs during the Opening Session. See PCXE Rule 7.34(a)(2) and PCXE Rule 7.35(c) for a detailed discussion of the Market Order Auction.

<sup>5</sup> For exchange-listed securities only, a PO Order is "a market order that is to be routed as a market order to the primary market. Such PO Orders may be entered until a cut-off time as determined from time to time by the Corporation \* \* \*" See PCXE Rule 7.31(x).