

### 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 self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, as amended, or

B. Institute proceedings to determine whether the proposed rule change, as amended, 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 filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2003-134 and should be submitted by November 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-26099 Filed 10-15-03; 8:45 am]

**BILLING CODE 8010-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48603; File No. SR-PCX-2003-48]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto, by the Pacific Exchange, Inc. Relating to the Establishment of a New Total Order Imbalance Indicator

October 8, 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 September 22, 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 Items have been prepared by the PCX. On September 30, 2003, the PCX submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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 facility ("ArcaEx"), the equities trading facility of PCXE, by: (1) amending PCXE Rule 1.1(q) to add the definition of Total Imbalance and Market Imbalance; and (2) amending PCXE Rule 7.35 to add a new Total Imbalance indicator to its Market Order Auction and Trading Halt Auction display.

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics*.

\* \* \* \* \*

#### PCX Equities, Inc.

##### Rule 1—Definitions

Rule 1.1—(No change).

(a)—(p)—(No change).

(q) For the purposes of the Opening Auction, the Market Order Auction and the Trading Halt Auction, as the case may be[,]:

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

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

<sup>3</sup> See letter from Peter D. Bloom, Managing Director, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 29, 2003 ("Amendment No. 1"). In Amendment No. 1, the PCX submitted a new Form 19b-4, which replaced the original filing in its entirety.

(1) the term "Imbalance" shall mean the number of buy or sell shares that [can not] *cannot* be matched with other shares at the Indicative Match Price at any given time.

(A) the term "Total Imbalance" shall mean the net Imbalance of buy (sell) orders at the Indicative Match Price for all orders that are eligible for execution during the applicable auction.

(B) the term "Market Imbalance" shall mean the imbalance of any remaining buy (sell) Market Orders that are not matched for execution during the applicable auction.

(r)—(aaa)—No change.

\* \* \* \* \*

#### Rule 7—Equities Trading

##### Opening Session Auctions

Rule 7.35 (No change).

(a)—(b)—(No change.)

(c) Market Order Auction.

(1) Publication of Indicative Match Price and Imbalances

(A) Beginning at 5:00 am (Pacific Time), and *updated real-time thereafter*, [various times thereafter as determined from time to time by the Corporation,] the Indicative Match Price of the Market Order Auction and the volume of *Market and Limit orders* available to trade at such price, and the *Market and Total Imbalance associated with the Market Order Auction, if any*, shall be published via electronic means [as determined from time to time by the Corporation. If such a price does not exist (*i.e.*, there is an Imbalance of market orders), the Archipelago Exchange shall indicate via electronic means that an Indicative Match Price does not exist]. *Market orders shall be included for purposes of calculating the Total Imbalance and Market Imbalance. Limit orders shall only be included in the Total Imbalance calculations.*

*Example 1:*

(1) Market order to buy 5000 shares;

(2) Auction-Only Limit Order to sell 1000 at 50;

(3) Limit order to sell 1000 at 50.50; and

(4) Limit order to sell 500 at 50.75.

The Archipelago Exchange will publish an Indicative Match Price of 50.75, a volume of 2500 shares, a buy Market Imbalance of 2500 shares, and a Total Imbalance of 2500 shares.

*Example 2:*

(1) Market order to buy 3000 shares;

(2) Market order to sell 1000 shares;

(3) Limit order to sell 1000 shares at 41.00; and

(4) Limit order to sell 1000 shares at 41.25.

The Archipelago Exchange will publish an Indicative Match Price of

<sup>8</sup> 17 CFR 200.30-3(a)(12).