

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48630; File No. SR-PCX-2003-24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Thereto, by the Pacific Exchange, Inc. Relating to Implementation of a Closing Auction for the Archipelago Exchange and the Establishment of Two New Order Types

October 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 2, 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. On October 7, 2003, the PCX submitted Amendment No. 1 to the proposed rule change.³ On October 15, 2003, the PCX submitted Amendment No. 2 to the proposed rule change.⁴ 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 adopt new rules for the implementation of a new order auction entitled "Closing Auction" for Nasdaq and exchange-listed securities traded on the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE. The proposal also introduces two new

order types called Market-on-Close Order and Limit-on-Close Order that would be eligible for execution only during the Closing Auction.

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

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Exhibit A

Text of the Proposed Rule Change: PCX Equities, Inc.

Rule 1

Definitions

Rule 1.1(a)-(p)—(No change.)

Imbalance

(q) For the purposes of the Opening Auction, the Market Order Auction, the *Closing Auction* and the Trading Halt 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.

Indicative Match Price

(r) For the purposes of the Opening Auction, the Market Order Auction, the *Closing Auction* and the Trading Halt 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 trading day's normal market hours (or, in the case of a *Closing Auction* or a Trading Halt Auction, the last sale during normal market hours), as determined by the [C] consolidated [T] tape will establish the opening price (or the closing price in the case of a *Closing Auction*), provided that if such price would trade through an eligible Limited Price Order designated for such auction, then the opening price will occur at the best price level available where no trade through occurs.

Limited Price Order

(s) The term "Limited Price Order" shall mean any order with a specified price or prices (e.g., limit orders, *Limit-on-Close Orders*, and Working Orders), other than Stop Orders.

(t)-(aaa)—(No change.)

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Rule 7

Equities Trading

Orders and Modifiers

Rule 7.31 (a)-(cc)—(No change.)

(dd) *Market-on-Close Order ("MOC")*. A Market Order that is to be executed only during the Closing Auction.

(ee) *Limit-on-Close Order ("LOC")*. A Limited Price Order that is to be executed only during the Closing Auction.

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Trading Sessions

Rule 7.34

(a)-(c)—(No change.)

(d) Orders Permitted in Each Session.

(1)—(No change.)

(2)—(No change.)

(3) During the Late Trading Session:

(A)—(No change.)

(B) *Users may enter Market-on-Close Orders or Limit-on-Close Orders beginning at 4:30 a.m. (Pacific Time) and concluding at 1:02 p.m. (Pacific Time) for inclusion in the Closing Auction, except as provided in Rule 7.35(e)(3). Market-on-Close Orders and Limit-on-Close Orders are eligible for execution only during the Closing Auction.*

(C) *Market-on-Close Orders and Limit-on-Close Orders that are not executed during the Closing Auction shall be cancelled. Timed Orders designated as good from 1:02 pm (Pacific Time) shall not be eligible to participate in the Closing Auction.*

(D)[(B)] Market orders and Stop Orders are not eligible for execution during the Late Trading Session.

(E)[(C)] The Directed Order and Tracking Order Processes are not available during the Late Trading Session.

(e)-(f)—(No change.)

[Opening Session] Auctions

Rule 7.35

(a)-(c)—(No change.)

[(d) Re-Opening After Trading Halts.

To re-open trading in a security following a trading halt in that security, the Archipelago Exchange shall conduct a Trading Halt Auction, as described below:]

[(1) Re-Opening Time. After trading in a security has been halted, the Corporation shall disseminate the estimated time at which trading in that security will re-open (the "Re-Opening Time").]

[(2) Publication of Indicative Match Price and Imbalances]

[(A) Immediately after trading is halted in a security, and various times thereafter as determined from time to time by the Corporation, the Indicative Match Price of the Trading Halt Auction and the volume available to trade at such price, shall be published via electronic means as determined from

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Peter D. Bloom, Managing Director, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 6, 2003 ("Amendment No. 1"). In Amendment No. 1, the PCX submitted a new Form 196-4, which replaced the original filing in its entirety.

⁴ See letter from Peter D. Bloom, Managing Director, Regulatory Policy, PCX, to Timothy Fox, Attorney, Division of Market Regulation, Commission, dated October 14, 2003 ("Amendment No. 2"). In Amendment No. 2, the PCX amended proposed PCXE Rule 7.35(g)(1) to clarify that Halt Auctions would be conducted pursuant to proposed PCXE Rules 7.35(g)(2) to (g)(6), and not pursuant to PCXE Rules 7.35(b) and (c), as previously cross-referenced. In addition, the PCX added the phrase "and an Indicative Match Price does not exist" to proposed PCXE Rule 7.35(g)(4)(A)(ii) for clarity, and to a related description contained Item 3 and Exhibit 1 to the filing. The PCX added a reference to the Closing Auction in Item 3 and Exhibit 1 for clarity. The PCX also made technical corrections to PCXE Rule 7.35(d)(1) and proposed PCXE Rule 7.35(g)(6).