

(1) The cross price would cause an execution at a price that trades through the NBBO; or

(2) The cross price is between the BBO and does not improve the BBO by the MPII pursuant to Rule 7.6(a), Commentary .06.

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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

As part of its continuing efforts to enhance participation on ArcaEx, the PCX is proposing to adopt a new order type called a "Cross-and-Post Order." The PCX believes that this new order type will provide ETP Holders and Sponsored Participants (collectively "Users") with more flexibility to facilitate cross transactions.

The PCX proposes to add PCXE Rule 7.31(ff) to define a Cross-and-Post Order. The PCX proposes that a Cross-and-Post Order would be an order that is executed pursuant to the existing cross rules⁴ while allowing for any residual portion of the cross order to be displayed in the Arca Book; provided, however, that the ArcaEx trading system would cancel a Cross-and-Post Order at the time of order entry if: (i) The cross price would cause an execution at a price that trades through the NBBO; or (ii) the cross price is between the BBO and does not improve the BBO by the minimum price improvement increment ("MPII") pursuant to PCXE Rule 7.6(a), Commentary .06.⁵ The PCX believes that Cross-and-Post Orders would facilitate order interaction and provide for greater execution frequency of cross orders in

their entirety. In addition, the PCX believes that the new order type would increase investor choices with respect to executing orders. For example, in the current system, any portion of a cross order that remains unexecuted is canceled. Customers must then re-enter the residual portion of the order if they wish to have it posted in the Arca Book. The Cross-and-Post order would enable electronic posting of the residual portion of the order pursuant to PCXE Rule 7.36.

The PCX believes that the implementation of the Cross-and-Post order type would facilitate enhanced order interaction and foster price competition. The PCX also believes that the proposal would promote a more efficient and effective market operation, and enhance the investment choices available to investors over a broad range of trading scenarios. Finally, the PCX believes that the proposed rule changes would permit the execution of cross transactions in a manner consistent with PCXE rules applicable to price-time priority, price improvement requirements, and NBBO price protection.

2. Statutory Basis

The PCX believes that the proposed rule change is consistent with Section 6(b)⁶ of the Act and furthers the objectives of Section 6(b)(5)⁷ 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, to remove impediments and perfect the mechanisms of a free and open market, and to protect investors and the public interest. In addition, the PCX believes that the proposed rule change is consistent with provisions of Section 11A(a)(1)(B) of the Act,⁸ 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 PCX 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

The PCX neither solicited nor received written comments concerning the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days after 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 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-2003-38 and should be submitted by November 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-27229 Filed 10-28-03; 8:45 am]

BILLING CODE 8010-01-P

⁴ See PCXE Rule 7.31(s).

⁵ The MPII on ArcaEx is equal to \$0.01 or 10% of the NBBO spread, whichever is greater. See PCXE Rule 7.6(a), Commentary .06. Under current PCXE rules, the MPII requirements must be satisfied in the execution of Cross Orders. See PCXE Rule 7.31(s).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78k(a)(1)(B).

⁹ 17 CFR 200.30-3(a)(12).