

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The NYSE believes that the proposed rule change, as amended, will not 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, as amended, 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 self-regulatory organization 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 filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to SR-NYSE-2003-21 and should be submitted by December 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.<sup>13</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-48767; File No. SR-PCX-2003-48]**

### **Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Establishment of a New Total Imbalance Indicator on the Archipelago Exchange**

November 10, 2003.

#### **I. Introduction**

On September 22, 2003, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend its rules governing the Archipelago Exchange facility ("ArcaEx"), the equities trading facility of PCX's wholly-owned subsidiary, PCX Equities, Inc. ("PCXE"), in order to add a new Total Imbalance indicator to its Market Order Auction and Trading Halt auction display. On September 30, 2003, the PCX submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on October 16, 2003.<sup>4</sup> The Commission received no comments in response to the proposal. This order approves the PCX's proposed rule change on an accelerated basis.

#### **II. Description**

PCX proposes to amend PCXE Rule 1.1(q) and PCXE Rule 7.35(c) and (d) to add a new order imbalance indicator to the information that is displayed during

the ArcaEx Market Order Auction<sup>5</sup> and during the Trading Halt Auction.<sup>6</sup> The new Total Imbalance Indicator would display the total net imbalance of market and limit orders at the "Indicative Match Price."<sup>7</sup> This imbalance indicator will be in addition to the existing market order Imbalance indicator that exclusively displays the imbalance of unmatched market orders.

Currently, PCXE Rule 1.1(q) defines the term "Imbalance" as the number of buy or sell shares that cannot be matched with other shares at the Indicative Match Price at any given time. The PCX proposes to amend PCXE Rule 1.1(q) to define two types of order imbalances, Total Imbalance and Market Imbalance. "Total Imbalance" would be defined as the net imbalance of buy (sell) orders at the Indicative Match Price for all orders that are eligible for execution during the Market Order Auction or the Trading Halt Auction. "Market Imbalance" would mean only the imbalance of any buy (sell) Market Orders that are not matched for execution during the applicable auction.

The PCXE's current rules governing the publication of imbalances associated with its Market Order Auction and Trading Halt Auction are set forth in PCXE Rule 7.35. During the Market Order Auction and the Trading Halt Auction, the PCX currently publishes only the unmatched portion of market orders (and not limit orders) as the Imbalance display. The PCX proposes to amend PCXE Rules 7.35(c) and 7.35(d) to establish an indicator that would display the Total Imbalance in addition to the Market Imbalance during the Market Order Auction and Trading Halt Auction.

#### **III. Discussion**

After careful review, the Commission finds that the proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general and furthers the objectives of Section 6(b)(5) of the Act.<sup>9</sup> The Commission believes that the proposal is designed to promote just and equitable principles of trade, to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market.<sup>10</sup>

The Commission believes that the dissemination of the aforementioned imbalance Indicators will provide ETP

<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.

<sup>4</sup> See Securities Exchange Act Release No. 48603 (October 8, 2003), 68 FR 59661 (SR-PCX-2003-48). The 21-day comment period expired on November 6, 2003.

<sup>5</sup> See PCXE Rule 7.35(c).

<sup>6</sup> See PCXE Rule 7.35(d).

<sup>7</sup> See PCXE Rule 1.1(r).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> In approving this rule, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> 17 CFR 200.30-3(a)(12).