

*It is Therefore ordered*, pursuant to section 19(b)(2) of the Act<sup>45</sup> that the proposed rule change (SR-NYSE-2003-39) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>46</sup>

Margaret H. McFarland,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48883; File No. SR-PCX-2003-24]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Amendments No. 1 and 2 and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Relating to the Implementation of a Closing Auction for the Archipelago Exchange and the Establishment of Market-on-Close and Limit-on-Close Order Types

December 4, 2003.

#### I. Introduction

On June 2, 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 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to establish a Closing Auction and create Market-on-Close ("MOC") and Limit-on-Close ("LOC") order types. On October 7, 2003, the PCX submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On October 15, 2003, the PCX submitted Amendment No. 2 to the proposed rule change.<sup>4</sup> The proposed rule change, as

amended, was published for comment in the **Federal Register** on October 22, 2003.<sup>5</sup> On December 2, 2003 the PCX submitted Amendment No. 3 to the proposed rule change.<sup>6</sup>

The Commission received no comments on the proposal. This order approves the proposed rule change, as amended by Amendment No. 1 and Amendment No. 2, and issues notice of, and grants accelerated approval to, Amendment No. 3.

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

\* \* \* \* \*

#### 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,

(1) the term "Imbalance" shall mean the number of buy or sell shares that 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:

(i) *as it relates to the Market Order Auction*, the imbalance of any

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).

<sup>5</sup> Securities Exchange Act Release No. 48630 (October 15, 2003), 68 FR 60432.

<sup>6</sup> See letter from Mai Shiver, Acting Director, Regulatory Policy, PCX, to Timothy Fox, Division of Market Regulation, Commission, dated December 1, 2003 ("Amendment No. 3"). In Amendment No. 3, the PCX withdrew the Amendment No. 3 that it filed with the Commission on November 19, 2003 and provided that this revised Amendment No. 3 and Exhibit A thereto, replace the original rule text, as amended by Amendments No. 1 and 2. Further, the PCX proposed to incorporate rule text relating to the publication of the Total Imbalance and Market Imbalance that the Commission recently approved. See Securities Exchange Act Release No. 48767 (November 10, 2003), 68 FR 65337 (November 19, 2003) (SR-PCX-2003-48). In addition, Amendment No. 3 clarifies that PCX will publish MOC orders that are not matched for execution as the Market Imbalance prior to the Closing Auction. The PCX also proposed to move the Closing Auction from the Late Trading Session to the Core Session, and to change the Closing Auction's start time from 1:02 pm Pacific Time to 1:00 Pacific time. Further, the Amendment clarified that MOC and LOC orders are eligible for execution during the Closing Auction.

remaining buy (sell) Market Orders that are not matched for execution during the applicable auction.

(ii) *as it relates to the Closing Auction, the imbalance of any remaining buy (sell) Market-on-Close Orders that are not matched for execution during the applicable auction.*

#### 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]onsolidated [T]ape 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.

(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.)  
(A)-(H)—(No change.)  
(2) During the Core Trading Session[.]:  
(A) *M[arket] O[rders], Stop Orders, NOW Orders, PNP Orders and orders eligible for the Directed Order, Display Order, Working Order and Tracking Order Processes are eligible for entry into and execution on the Archipelago Exchange.*

(B) *Users may enter Market-on-Close Orders, Limit-on-Close Orders, and*

<sup>45</sup> 15 U.S.C. 78s(b)(2).

<sup>46</sup> 17 CFR 200.30-3(a)(12).

<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 October 6, 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 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