

were equal to or greater than a predetermined amount, as determined from time to time by the PCXE, ArcaEx would assign a designator to identify it as significant ("SIG") to the Indicative Match Price and publish the designator via electronic means as determined by the PCXE.

Any Imbalance in the Closing Auction would be reduced by new orders, entered on the side of the market opposite the Imbalance, pursuant to the following priority: (1) MOC Orders; (2) Limited Priced Orders entered prior to the Closing Auction; and (3) LOC Orders.

Between 12:58 pm (Pacific Time) and the conclusion of the Closing Auction, Limited Price Orders eligible for the Late Trading Session may be cancelled, but MOC Orders and LOC Orders may not be cancelled.¹¹ In addition, between 12:58 pm (Pacific Time) and the conclusion of the Closing Auction, MOC Orders and LOC Orders that reduce the Imbalance may be entered on the opposite side of the Imbalance.¹² However, any time before the Closing Auction, MOC Orders and LOC Orders that create equilibrium and thereafter increase the Imbalance would be rejected.¹³ ArcaEx would determine the price of the Closing Auction as follows: if there is no Imbalance, orders would be executed in the Closing Auction at the Indicative Match Price as of 1:00 pm (Pacific Time).¹⁴ Conversely, if an Imbalance exists, or if equilibrium exists between buy MOC Orders and sell MOC Orders and an Indicative Match Price does not exist, as many buy MOC Orders and sell MOC Orders as possible would be matched, on a time priority basis, as follows: (1) At the midpoint of the national best bid or offer ("NBBO")¹⁵ at 1:00 pm (Pacific Time), provided that the NBBO of the market centers that are still open is not locked or crossed; or (2) at the locked price if the NBBO is locked at 1:00 pm (Pacific Time); or (3) if the NBBO is crossed at 1:00 pm (Pacific Time) and ArcaEx is a

party to the crossed market, at the bid (offer) side of the best bid or offer ("BBO")¹⁶ which is crossed with the NBBO; or (4) if the NBBO is crossed at 1:00 pm (Pacific Time) and ArcaEx is not a party to the crossed market, at the last regular sale during market hours as determined by the consolidated tape.¹⁷ Such executions would be designated with a modifier to identify them as Closing Auction trades. The MOC Orders that are eligible for but not executed in the Closing Auction would be cancelled immediately upon conclusion of the Closing Auction.

Finally, the PCX proposes that in the event that trading in a stock is halted and scheduled to re-open prior to 12:55 pm (Pacific Time), a Halt Auction and Closing Auction would be conducted. However, in the event that trading in a stock is halted and is thereafter scheduled to re-open at 12:55 pm (Pacific Time) or later, no Closing Auction would occur for that security. Instead, only a Halt Auction would be conducted.¹⁸

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange¹⁹ and, in particular, the requirements of Section 6(b) of the Act²⁰ and the rules and regulations thereunder. The Commission finds that the rule change, as amended, is consistent with Section 6(b)(5) of the Act,²¹ which requires, among other things, that the rules of the PCX be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulation, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that this proposed rule change should provide ArcaEx Users with an order type that is already available on a number of other

exchanges.²² The Commission further believes that publishing the Match Volume, Indicative Match Price, the Market Imbalance and Total Imbalance may provide market participants with an additional source of closing price information for Nasdaq and exchange-listed securities in addition to the information disseminated by markets, which should enhance intermarket competition by enabling market participants to assess and compare pricing among different markets. In addition, the Commission believes, based upon experience of other exchanges such as the NYSE and Amex, that publishing this information before the Closing Auction should reduce the volatility that may arise from the liquidation of stock positions at the end of the day, particularly on the days when some stock index options, stock index futures, and options on stock index futures expire or settle concurrently.²³ The Commission further believes that publishing a Total Imbalance and Market Imbalance following a Trading Halt in a given security will increase the information available to Users when making investment decisions.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving Amendment No. 3 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 3, the PCX proposed to incorporate rule text relating to Total Imbalance and Market Imbalance publications that the Commission recently approved.²⁴ In addition, Amendment No. 3 clarified that PCX would publish MOC orders that are not matched for execution as the Market Imbalance prior to the Closing Auction, move the Closing Auction from the Late Trading Session to the Core Session, and change its start time from 1:02 pm Pacific Time to 1:00 Pacific time. The Amendment further clarified that MOC and LOC orders are eligible for execution during the Closing Auction. The Commission believes that Amendment No. 3 does not raise any new regulatory issues. Further, the

¹¹ In Amendment No. 3, the PCX changed the relevant time from 1:00 pm (Pacific Time) to 12:58 pm (Pacific Time).

¹² *Id.*

¹³ MOC Orders and LOC Orders that are of a size to "flip" the Imbalance from a buy to a sell would be rejected. For example, assume: (1) LOC Order to buy 1000 shares; (2) LOC Order to sell 1500 shares, creating an Imbalance of 500 shares on the sell side. A MOC Order or LOC Order to buy 500 shares would be permitted because it achieves equilibrium. However, a MOC Order or LOC Order to buy 1000 shares would not be permitted as it would invert the Imbalance of 500 shares on the sell side to an Imbalance of 500 shares on the buy side.

¹⁴ In Amendment No. 3, the PCX changed the relevant time from 1:02 pm (Pacific Time) to 1:00 pm (Pacific Time).

¹⁵ See PCXE Rule 1.1(dd) (definition of NBBO).

¹⁶ See PCXE Rule 1.1(h) (definition of BBO).

¹⁷ See *supra* note 14.

¹⁸ See proposed PCXE Rule 7.35(f)(1).

¹⁹ In approving this proposed rule change the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

²² See American Stock Exchange ("Amex") Rule 131(e), Boston Stock Exchange Ch. II, Section 22, Chicago Stock Exchange Article XX, Rule 44, and New York Stock Exchange ("NYSE") Rule 123C.

²³ See Securities Exchange Act Release No. 40094 (June 15, 1998), 63 FR 33975 (June 22, 1998) (SR-NYSE-97-36) (Order approving a revision to the NYSE's policy for entry of MOC and LOC orders and publication of imbalances); Securities Exchange Act Release No. 40123 (June 24, 1998), 63 FR 38230 (July 15, 1998) (SR-Amex-98-10) (Order approving the establishment of LOC orders on the Amex).

²⁴ See Securities Exchange Act Release No. 48767 (November 10, 2003), 68 FR 65337 (November 19, 2003) (SR-PCX-2003-48).