

securities for which they are registered for each Market Order Auction.¹¹ The Exchange proposes to allow Market Makers to submit Cleanup Orders at their discretion. As the Cleanup Orders are only utilized during Market Order Auction (when there is an imbalance of order), as well as for the reasons stated above, the impact on the system from removing this requirement would be minimal on the ArcaEx.

The Exchange believes eliminating the aforementioned requirements will facilitate additional Market Maker participation on ArcaEx and will further enhance order interaction, provide greater depth in liquidity, and foster price competition. Moreover, the Exchange believes that the elimination of such requirements will place ArcaEx on a level playing field with other market centers and allow ArcaEx to fairly compete for Market Maker participation.

2. Statutory Basis

The PCX believes that the rule change is consistent with section 6(b) of the Act in general¹² and section 6(b)(5) of the Act in particular.¹³ The Exchange believes that the proposed rule change is intended to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The proposed rule change does 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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**

makers registered in the relevant security and executed against such market makers' Cleanup Orders. If no Imbalance exists at the time of the Market Order Auction, all Cleanup Orders would be cancelled at that time.

¹¹ See PCXE Rule 7.35(c) for a discussion of the Market Order Auction process.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

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 amended proposal 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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-PCX-2003-59. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail, but not by both methods. 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 PCX. All submissions should refer to File No. SR-PCX-2003-59 and should be submitted by January 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48936; File No. SR-PCX-2003-32]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change to Incorporate New PCX Rules Into Its Minor Rule Plan

December 17, 2003.

On July 8, 2003, the Pacific Stock Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt new PCX Rules 10.13(h)(40)-(44) and 10.13(k)(i)(40)-(44) in order to incorporate five existing PCX rules into the Minor Rule Plan and Recommended Fine Schedule.

The proposed rule change was published for comment in the **Federal Register** on November 12, 2003.³ The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁴ and, in particular, the requirements of section 6 of the Act⁵ and the rules and regulations thereunder. In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(6)⁶ of the Act because it should enable the Exchange to appropriately discipline its members and others associated with its members for violation of the provisions of this title, the rules or regulations thereunder, or the rules of the Exchange.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Exchange's minor rule violation plan. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 48746 (November 4, 2003), 68 FR 64182.

⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(6).

¹⁴ 17 CFR 200.30-3(a)(12).