

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.¹³

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 1934¹ and Rule 19b-4 thereunder,² 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.³ Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on October 16, 2003.⁴ 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 Auction⁵ and during the Trading Halt Auction.⁶ The new Total Imbalance Indicator would display the total net imbalance of market and limit orders at the "Indicative Match Price."⁷ 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 Act⁸ in general and furthers the objectives of Section 6(b)(5) of the Act.⁹ 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.¹⁰

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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.

⁴ 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.

⁵ See PCXE Rule 7.35(c).

⁶ See PCXE Rule 7.35(d).

⁷ See PCXE Rule 1.1(r).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 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).

¹³ 17 CFR 200.30-3(a)(12).

Holders and Sponsored Participants (collectively "Users") with additional information with which to make trading decisions during Market Order Auctions and Trading Halt Auctions.

Accordingly, this enhancement should facilitate improved order interaction and foster price competition. The Commission believes that the proposed rule change will provide a more transparent and efficient market operation, and will enhance the information available to investors.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission believes that the proposed rule change will enhance the information available to ArcaEx Users to assist them in making investment decisions during the Opening Session and prior to the re-opening of trading in a security following a trading halt. The Commission further notes that PCX has represented that ArcaEx has already developed the capability to publish the new Total Imbalance indicator.¹¹

IV. Order Granting Accelerated Approval

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. Moreover, the Commission finds that there is good cause to grant accelerated approval to the proposed rule change, as amended.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change, as amended (SR-PCX-2003-48), is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48768; File No. SR-PCX-2003-54]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. to Amend PCXE Rule 7.37(d) Relating to Routing Orders Away

November 10, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 25, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which the PCX has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend PCXE Rule 7.37(d) relating to the routing of orders to away market centers or market participants. The text of the proposed rule change appears below. New text is in *italics*. Deleted text is in *brackets*.

PCX Equities, Inc.

Rule 7

Equities Trading

Order Execution

* * * * *

Rule 7.37. (a)–(c) No change.

(d) Step 5: Routing Away.

(1)–(2)—No change.

(A)(i) The order shall be routed, either in its entirety or as component orders, to another market center or market participant as a limit order *equal to the price and no greater than the size* [priced at] of the quote published by the market center or market participant. *The remaining portion of the order, if any, shall be ranked and displayed in the Arca Book in accordance with the terms of such order under Rule 7.36 and such order shall be eligible for execution under Rule 7.37.*

(ii)—No change.

(B) *The order that is routed away shall remain outside the Archipelago*

Exchange for a prescribed period of time and may be executed in whole or in part subject to the applicable trading rules of the relevant market center or market participant. [Archipelago Exchange shall attempt to match the part of the order that has not been routed away against then available trading interest in the Archipelago Exchange for an internal fill by following Steps 1 through 4 as set forth in paragraphs (a) through (c) above.]

(i) *While an order remains outside the Archipelago Exchange, it shall have no time standing, relative to other orders received from Users at the same price which may be executed against the Arca Book.*

(ii) *Requests from Users to cancel their orders while the order is routed away to another market center or market participant and remains outside the Archipelago Exchange shall be processed, subject to the applicable trading rules of the relevant market center or market participant.*

(C) [Orders routed to other market centers or market participants shall remain outside the Archipelago Exchange for a prescribed time period during which they may be executed (in whole or in part) or declined. While an order remains outside the Archipelago Exchange, it shall have no time standing, relative to other orders received from Users at the same price which may be executed against the Arca Book. Requests from Users to cancel their orders while the order is routed away to another market center or market participant and remains outside the Archipelago Exchange shall be processed, subject to the applicable trading rules of the relevant market center or market participant.]

[(D)] *Where an [In the event that a marketable] order or portion of an order is routed away [from the Archipelago Exchange to another market center or market participant] and is not executed either in whole or in part [in its entirety] at the other market center or market participant[']s quote [i.e., all attempts at the fill are declined or timed-out], the order shall be ranked and displayed in the Arca Book in accordance with the terms of such order under Rule 7.36 and such order shall be eligible for execution under Rule 7.37.* [the Archipelago Exchange shall attempt to match the residual or declined market order against then available trading interest in the Archipelago Exchange for an internal fill by following Steps 1 through 4 as set forth in paragraphs (a) through (c) above. Any remaining unmatched trading interest shall be re-routed to another market center or market participant at the next available

¹¹ Telephone conversation between Peter Bloom, Regulatory Policy, PCX and Tim Fox, Attorney, Commission on October 30, 2003.

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.