

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, as amended, or

B. Institute proceedings to determine whether the proposed rule change, as amended, 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 NASD. All submissions should refer to File No. SR-NASD-2003-134 and should be submitted by November 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48603; File No. SR-PCX-2003-48]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto, by the Pacific Exchange, Inc. Relating to the Establishment of a New Total Order Imbalance Indicator

October 8, 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 22, 2003, the Pacific Exchange, Inc. ("PCX") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. On September 30, 2003, the PCX submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The PCX through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its rules governing the Archipelago Exchange facility ("ArcaEx"), the equities trading facility of PCXE, by: (1) amending PCXE Rule 1.1(q) to add the definition of Total Imbalance and Market Imbalance; and (2) amending PCXE Rule 7.35 to add a new Total Imbalance indicator to its Market Order Auction and Trading Halt Auction display.

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics*.

* * * * *

PCX Equities, Inc.

Rule 1—Definitions

Rule 1.1—(No change).

(a)—(p)—(No change).

(q) For the purposes of the Opening Auction, the Market Order Auction and the Trading Halt Auction, as the case may be[,]:

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.

(1) the term "Imbalance" shall mean the number of buy or sell shares that [can not] *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 the imbalance of any remaining buy (sell) Market Orders that are not matched for execution during the applicable auction.

(r)—(aaa)—No change.

* * * * *

Rule 7—Equities Trading

Opening Session Auctions

Rule 7.35 (No change).

(a)—(b)—(No change.)

(c) Market Order Auction.

(1) Publication of Indicative Match Price and Imbalances

(A) Beginning at 5:00 am (Pacific Time), and *updated real-time thereafter*, [various times thereafter as determined from time to time by the Corporation,] the Indicative Match Price of the Market Order Auction and the volume of *Market and Limit orders* available to trade at such price, and the *Market and Total Imbalance associated with the Market Order Auction, if any*, shall be published via electronic means [as determined from time to time by the Corporation. If such a price does not exist (*i.e.*, there is an Imbalance of market orders), the Archipelago Exchange shall indicate via electronic means that an Indicative Match Price does not exist]. *Market orders shall be included for purposes of calculating the Total Imbalance and Market Imbalance. Limit orders shall only be included in the Total Imbalance calculations.*

Example 1:

(1) Market order to buy 5000 shares;
(2) Auction-Only Limit Order to sell 1000 at 50;
(3) Limit order to sell 1000 at 50.50;
and

(4) Limit order to sell 500 at 50.75.
The Archipelago Exchange will publish an Indicative Match Price of 50.75, a volume of 2500 shares, a buy Market Imbalance of 2500 shares, and a Total Imbalance of 2500 shares.

Example 2:

(1) Market order to buy 3000 shares;
(2) Market order to sell 1000 shares;
(3) Limit order to sell 1000 shares at 41.00; and
(4) Limit order to sell 1000 shares at 41.25.

The Archipelago Exchange will publish an Indicative Match Price of

⁸ 17 CFR 200.30-3(a)(12).

41.25 and a match volume of 3000 shares and will not publish an Imbalance.

(B) *If an Indicative Match Price does not exist, the Archipelago Exchange shall indicate via electronic means that an Indicative Match Price does not exist.* [Beginning at 5:00 am (Pacific Time), and various times thereafter as determined from time to time by the Corporation, the market order Imbalance associated with the Market Order Auction, if any, shall be published via electronic means as determined from time to time by the Corporation.]

(C) If the difference between the Indicative Match Price and the closing price of the previous trading day's normal market hours, as determined by the Consolidated Tape, is equal to or greater than a pre-determined amount, as determined from time to time by the Corporation, the Archipelago Exchange will assign a "SIG" designator to such Indicative Match Price and publish such designator via electronic means as determined from time to time by the Corporation.

[Example:

- (1) Market order to buy 5000 shares;
- (2) Auction-Only Limit Order to sell 1000 at 50;
- (3) Limit order to sell 1000 at 50.50; and
- (4) Limit order to sell 500 at 50.75.

The Archipelago Exchange will publish an Indicative Match Price of 50.75, a volume of 2500 shares, and a buy Imbalance of 2500 shares.]

[Example:

- (1) Market order to buy 3000 shares;
- (2) Market order to sell 1000;
- (3) Limit order to sell 1000 at 41.00; and
- (4) Limit order to sell 1000 at 41.25.

The Archipelago Exchange will publish an Indicative Match Price of 41.25 and a volume of 3000 shares and will not publish an Imbalance.]

(2)–(3)—(No change).

(d) Re-Opening After Trading Halts. To re-open trading in a security following a trading halt in that security, the Archipelago Exchange shall conduct a Trading Halt Auction, as described below:

(1)—(No change).

(2) Publication of Indicative Match Price and Imbalances.

(A) Immediately after trading is halted in a security, and *updated real-time thereafter* [various times thereafter as determined from time to time by the Corporation], the Indicative Match Price of the Trading Halt Auction and the volume available to trade at such price, shall be published via electronic means [as determined from time to time by the

Corporation]. If such a price does not exist [(i.e., there is an Imbalance of market orders)], the Archipelago Exchange shall indicate via electronic means that an Indicative Match Price does not exist.

(B) Immediately after trading is halted in a security, and [various times thereafter as determined from time to time by the Corporation] *updated real-time thereafter*, the [m]Market [order] and Total Imbalance associated with the Trading Halt Auction, if any, shall be published via electronic means [as determined from time to time by the Corporation]. *Market orders shall be included for purposes of calculating the Total Imbalance and Market Imbalance. Limit orders shall only be included in the Total Imbalance calculations.*

(C)—(No change).

(3)–(6)—(No change).

(e)–(f)—(No change).

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of its continuing efforts to enhance participation on ArcaEx, the PCX is proposing to add a new imbalance indicator to its Market Order Auction and Trading Halt Auction display to reflect the total net imbalance of market and limit orders at the indicative match price. This imbalance indicator will be in addition to the already existing market imbalance indicator that displays the imbalance of unmatched market orders. The PCX believes that the display of the new total imbalance indicator will provide ETP Holders and Sponsored Participants (collectively "Users") with more information regarding auction imbalances. Furthermore, the PCX proposes to add the terms "Total Imbalance" and "Market Imbalance" to PCXE Rule 1.1(q). The PCX is also

proposing to amend PCXE Rule 7.35(c) and (d) to clarify that the published Total Imbalance or Market Imbalance (if any exist) may contain market and/or limit orders.

Currently, PCXE Rule 1.1(q) refers to the term "Imbalance." The PCX proposes to amend PCXE Rule 1.1(q) to define the terms "Total Imbalance" and "Market Imbalance" for clarity. 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. The term "Market Imbalance" shall mean the imbalance of any remaining 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. The PCX now proposes to add to PCXE Rule 7.35(c) and (d) a Total Imbalance indicator. The current rule only refers to publishing a Market Imbalance. In order to provide more information about the auction imbalance during the Market Order Auction and Trading Halt Auction, the PCX proposes to also publish the Total Imbalance, if any exists, to reflect the fact that the total size of the order imbalance includes both market and limit orders. The dissemination of this new imbalance indicator does not impact the operation of the existing Market Order Auction or Trading Halt Auction processes as described in PCXE Rule 7.35(c) and (d), respectively.

The PCX believes that the dissemination of the aforementioned imbalance indicators would provide Users with additional information with which to make trading decisions during the auction process. Accordingly, this would facilitate enhanced order interaction and foster price competition. The PCX believes that the proposed rule change, as amended, would provide a more efficient and effective market operation, and would enhance the information available to investors.

2. Statutory Basis

The PCX believes that the proposed rule change, as amended, is consistent with Section 6(b)⁴ of the Act, in general, and further the objectives of Section 6(b)(5),⁵ in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

the mechanisms of a free and open market and to protect investors and the public interest. In addition, the PCX believes that the proposed rule change, as amended, is consistent with provisions of Section 11A(a)(1)(B) of the Act,⁶ which states that new data processing and communications techniques create an opportunity for more efficient and effective market operations.

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

The PCX does not believe that the proposed rule change, as amended, will 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 PCX neither solicited nor received written comments concerning the proposed rule change.

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 PCX consents, the Commission will:

- (A) by order approve such proposed rule change, as amended; or
- (B) institute proceedings to determine whether the proposed rule change, as amended, 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 filings will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-2003-48 and should be submitted by November 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48598; File No. SR-PCX-2003-46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Transmission of Identity Orders

October 7, 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 5, 2003, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which the PCX has prepared. On September 30, 2003 the PCX submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The PCX, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its rules governing the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE. Specifically, the PCX proposes to offer an identity order feature to its Equities Trading Permit ("ETP") Holders.⁴ In

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Peter Bloom, Managing Director of Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission dated September 29, 2003 ("Amendment No. 1"). In Amendment No. 1, the PCX replaced its proposed rule change in its entirety.

⁴ See PCXE Rule 1.1(n) for the definition of "ETP Holder."

accordance with the proposal, an ETP Holder may affirmatively choose, on an order-by-order basis, to display orders with its unique ETP identifier (hereinafter referred to as the "ETPID"). To facilitate the change, the PCX proposes to amend PCXE Rules 7.7(b) ("Transmission of Bids or Offers") and 7.36(b) ("Order Ranking and Display") to clarify and reconcile when ETP Holders may display their identities. The PCX also wishes to make additional changes to PCXE Rule 7.7(a). The text of the proposed rule change is below. Proposed new language is italicized; deletions are in brackets.

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Rule 7.7(a). [The names of ETP Holders bidding for or offering securities through the use of the facilities of the Corporation shall not be transmitted from the facilities of the Corporation to a non-holder of an ETP.] No ETP Holder having the right to trade through the facilities of the Corporation and who has been a party to or has knowledge of an execution shall be under obligation to divulge the name of the buying or selling firm in any transaction.

(b) Except as otherwise permitted by these Rules, no ETP Holder shall transmit through the facilities of the Corporation any information regarding a bid, offer, [or] other indication of an order, *or the ETP Holder's identity* to a non-holder of an ETP *or to another ETP Holder until permission to disclose and transmit* such bid, offer, [or] other indication of an order, *or the ETP Holder's identity* has been [disclosed and permission to transmit such information has been] obtained from the originating ETP Holder *or the originating ETP Holder affirmatively elects to disclose its identity.*

* * * * *

Order Ranking and Display

Rule 7.36—No change.

(a)(1)–(a)(2)—No change.

(b) Display. *Except as otherwise permitted by Rule 7.7, [A] all* orders at all price levels in the Display Order Process of the Arca Book shall be displayed to all Users and other market participants on an anonymous basis.

(c)—No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change, and discussed any

⁶ 15 U.S.C. 78k(a)(1)(B).