

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47457; File No. SR-PCX-2003-10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Eligibility of Timed Orders During the Opening Auction and Market Order Auction, Amending PCXE Rules 7.34 and 7.35

March 6, 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 March 3, 2003, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II, 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, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its rules governing the Archipelago Exchange ("ArcaEx"), the PCXE's equities trading facility, by: (1) Amending PCXE Rule 7.34(d) to clarify that a specific type of Limited Price Order; namely a Timed Order³ designated as good from 5 a.m. (Pacific Time) or good from 6:30 a.m. (Pacific Time), will be excluded from eligibility for execution during the Opening Auction and Market Order Auction, respectively; and (2) amending PCXE Rule 7.35(a) through (c) to exclude specified Timed Orders during the applicable auctions. The text of the proposed rule change is below. New text is italicized.

Rule 7—Equities Trading

Orders and Modifiers

Trading Sessions

Rule 7.34(a)–(c)—No change.

(d) Order Permitted in Each Session.

(1) During the Opening Session:

(A)–(F)—No change.

(G) *Limited Price Orders are eligible for execution during the Opening Session; provided, however, a Timed Order designated for the Opening Session and designated as good from 5 am (Pacific Time) is not eligible for execution during the Opening Auction. Similarly, a Timed Order designated for the Opening Session and designated as good from 6:30 am (Pacific Time) is not eligible for execution during the Market Order Auction*

(H)—No change.

(2)–(3)—No change.

(e)–(f)—No change.

Opening Session Auctions

Rule 7.35(a) Order Entry and Cancellation Before Opening Auction

(1)—No change.

(2) Only Limited Priced Orders designated for the Opening Session will be eligible for the Opening Auction. *However, a Limited Price Order designated for the Opening Session and entered as a Timed Order good from 5 am (Pacific Time), is not eligible for execution during the Opening Auction. Market orders entered before the Opening Auction or during the Opening Session will participate in the Market Order Auction. However, a Limited Price Order designated for the Opening Session and entered as a Timed Order good from 6:30 am (Pacific Time), is not eligible for execution during the Market Order Auction. Limited Price Orders, including Timed Orders, designated for the Core Trading Session and not designated for the Opening Session will become eligible for execution at the commencement of the Market Order Auction pursuant to Rule 7.35(c).*

(3)–(4)—No change.

(b) Opening Auction.

(1) At 5 am (Pacific Time), Limited Priced Orders designated for the Opening Session are matched and executed in the Opening Auction; *provided, however, a Limited Price Order designated for the Opening Session and entered as a Timed Order good from 5 am (Pacific Time), is not eligible for execution during the Opening Auction.*

(2)–(3)—No change.

(4) *A Limited Price Order designated for the Opening Session and entered as a Timed Order good from 6:30 am (Pacific Time) is not eligible for*

execution during the Market Order Auction.

(c)–(f)—No change.

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. 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 those statements.

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

1. Purpose

ArcaEx commenced operations on March 22, 2002, replacing the PCXE's traditional trading floor facilities. As part of its continuing review of the system's functionality and its duty to ensure the reporting of current, accurate, and consistent information regarding the Indicative Price Match⁴ and Imbalances⁵ on ArcaEx, the PCXE proposes to amend its rule to exclude Timed Orders designated as good from 5 a.m. (Pacific Time) or 6:30 a.m. (Pacific Time) from execution during the Opening Auction and Market Order Auction, respectively.

ArcaEx operates three trading sessions each day the PCXE is open for business.⁶ The proposed rule change concerns only the Opening Session. The Opening Session begins at 5 a.m. (Pacific Time) and concludes at 6:30 a.m. (Pacific Time) with the

⁴ PCXE Rule 1.1(r) provides, in part: "[f]or purposes of the Opening Auction [and] the Market 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 day's normal market hours * * * as determined by the Consolidated Tape will establish the opening price, provided that such price would trade through an eligible Limited Price Order designated for such an auction, then the opening price will occur at the best price level available where no trade through occurs."

⁵ PCXE Rule 1.1(q) provides, in part: "[f]or purposes of the Opening Auction [and] the Market Auction * * * as the case may be, the term 'Imbalance' shall mean the number of buy or sell shares that can not be matched with other shares at the Indicative Match Price at any given time."

⁶ The three trading sessions are (1) the Opening session; (2) the Core Session; and (3) the Late Trading Session. See PCXE Rule 7.34(a).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² CFR 240.19b-4.

³ See PCXE Rule 7.31(q) (definition of a "Timed Order").

commencement of the Core Trading Session. The Opening Session is comprised of the Opening Auction and, thereafter, the Market Order Auction.⁷ Limited Price Orders are matched in the Opening Auction or the Market Order Auction and executed at the Indicative Match Price.

ArcaEx currently permits a Timed Order designated as good from 5 a.m. (Pacific Time) and designated for the Opening Session to participate in the Opening Auction. Conversely, a Timed Order designated as good from 6:30 a.m. (Pacific Time) and designated for the Opening Session does not participate in the Market Order Auction. The proposed rule change is intended to reconcile the treatment of Timed Orders during the Opening Session. Accordingly, Timed Orders designated as good from 5 a.m. (Pacific Time) or 6:30 a.m. (Pacific Time) and designated for the Opening Session will not be eligible for inclusion in the Opening Auction or the Market Order Auction and, therefore, will not be reported for purposes of the Indicative Match Price and Imbalance. The PCX believes that the proposed change will facilitate ArcaEx's dissemination of consistent information.

2. Basis

The PCX believes that the proposed rule change is consistent with Section 6(b) of the Act⁸ and furthers the objectives of Section 6(b)(5) of the Act⁹ because it is designed to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments and perfect the mechanisms of a free and open market, and to protect investors and the public interest.

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

The PCX does not believe that the proposed rule change 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 on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PCX submitted a draft of this filing, including the proposed new rule text, to the Commission in fulfillment of the five-day draft notice period of Rule 19b-4(f)(6).¹⁰ The PCX has further designated that the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the proposed rule change has become effective immediately upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6)¹³ does not become operative until 30 days after the date of filing or such shorter time as the Commission may designate if such action is consistent with the protection of investors and the public interest. The PCX believes that the proposed rule change will reconcile the treatment of Timed Orders during the Opening Session and will eliminate any potential confusion with respect to the use of this order modifier. The PCX also believes that the rule change is necessary and appropriate in order to promote a fair, orderly, and competitive market. Therefore, the PCX has requested that the Commission accelerate the implementation of the proposed rule changes so that it may become operative immediately, before the 30-day period specified in Rule 19b-4(f)(6)(iii).¹⁴

The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day period and to designate that the proposed rule change has become operative as of March 3, 2003, the date the PCX filed the proposal with the Commission.¹⁵ At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the 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. 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-2003-10 and should be submitted by April 3, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47467; File No. SR-PCX-2002-75]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Exchange, Inc., as Amended, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Relating to New Order Types and To Amend PCXE Rule 7.37

March 7, 2003.

I. Introduction

On December 9, 2002, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² the Pacific Exchange, Inc. ("PCX" or "Exchange"),

¹⁶ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ *Id.*

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ The Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation for the sole purpose of accelerating the operative date of the proposed rule change. 15 U.S.C. 78c(f).

⁷ See PCXE Rule 7.35(b) and PCXE Rule 7.35(c), respectively, for a detailed discussion of the Opening Auction and Market Order Auction.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).