

*It is Therefore ordered*, pursuant to section 19(b)(2) of the Act<sup>45</sup> that the proposed rule change (SR-NYSE-2003-39) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>46</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-30840 Filed 12-12-03; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48883; File No. SR-PCX-2003-24]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Amendments No. 1 and 2 and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Relating to the Implementation of a Closing Auction for the Archipelago Exchange and the Establishment of Market-on-Close and Limit-on-Close Order Types

December 4, 2003.

#### I. Introduction

On June 2, 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 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to establish a Closing Auction and create Market-on-Close ("MOC") and Limit-on-Close ("LOC") order types. On October 7, 2003, the PCX submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On October 15, 2003, the PCX submitted Amendment No. 2 to the proposed rule change.<sup>4</sup> The proposed rule change, as

amended, was published for comment in the **Federal Register** on October 22, 2003.<sup>5</sup> On December 2, 2003 the PCX submitted Amendment No. 3 to the proposed rule change.<sup>6</sup>

The Commission received no comments on the proposal. This order approves the proposed rule change, as amended by Amendment No. 1 and Amendment No. 2, and issues notice of, and grants accelerated approval to, Amendment No. 3.

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics*, and proposed deletions are in [brackets].

\* \* \* \* \*

#### Text of the Proposed Rule Change: PCX Equities, Inc.

Rule 1 Definitions.

Rule 1.1 (a)-(p)—(No change.)

#### Imbalance

(q) For the purposes of the Opening Auction, the Market Order Auction, *the Closing Auction* and the Trading Halt Auction, as the case may be,

(1) the term "Imbalance" shall mean the number of buy or sell shares that 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:

(i) *as it relates to the Market Order Auction*, the imbalance of any

Exhibit 1 to the filing. The PCX added a reference to the Closing Auction in Item 3 and Exhibit 1 for clarity. The PCX also made technical corrections to PCXE Rule 7.35(d)(1) and proposed PCXE Rule 7.35(g)(6).

<sup>5</sup> Securities Exchange Act Release No. 48630 (October 15, 2003), 68 FR 60432.

<sup>6</sup> See letter from Mai Shiver, Acting Director, Regulatory Policy, PCX, to Timothy Fox, Division of Market Regulation, Commission, dated December 1, 2003 ("Amendment No. 3"). In Amendment No. 3, the PCX withdrew the Amendment No. 3 that it filed with the Commission on November 19, 2003 and provided that this revised Amendment No. 3 and Exhibit A thereto, replace the original rule text, as amended by Amendments No. 1 and 2. Further, the PCX proposed to incorporate rule text relating to the publication of the Total Imbalance and Market Imbalance that the Commission recently approved. See Securities Exchange Act Release No. 48767 (November 10, 2003), 68 FR 65337 (November 19, 2003) (SR-PCX-2003-48). In addition, Amendment No. 3 clarifies that PCX will publish MOC orders that are not matched for execution as the Market Imbalance prior to the Closing Auction. The PCX also proposed to move the Closing Auction from the Late Trading Session to the Core Session, and to change the Closing Auction's start time from 1:02 pm Pacific Time to 1:00 Pacific time. Further, the Amendment clarified that MOC and LOC orders are eligible for execution during the Closing Auction.

remaining buy (sell) Market Orders that are not matched for execution during the applicable auction.

(ii) *as it relates to the Closing Auction, the imbalance of any remaining buy (sell) Market-on-Close Orders that are not matched for execution during the applicable auction.*

#### Indicative Match Price

(r) For the purposes of the Opening Auction, the Market Order Auction, *the Closing Auction* and the Trading Halt 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 trading day's normal market hours (or, in the case of a *Closing Auction* or a Trading Halt Auction, the last sale during normal market hours), as determined by the [C]consolidated [T]tape will establish the opening price (*or the closing price in the case of a Closing Auction*), provided that if such price would trade through an eligible Limited Price Order designated for such auction, then the opening price will occur at the best price level available where no trade through occurs.

(s) The term "Limited Price Order" shall mean any order with a specified price or prices (e.g., limit orders, *Limit-on-Close Orders*, and Working Orders), other than Stop Orders.

(t)-(aaa)—(No change.)

\* \* \* \* \*

#### Rule 7 Equities Trading—Orders and Modifiers

Rule 7.31 (a)-(cc)—(No change.)  
(dd) *Market-on-Close Order ("MOC"). A Market Order that is to be executed only during the Closing Auction.*  
(ee) *Limit-on-Close Order ("LOC"). A Limited Price Order that is to be executed only during the Closing Auction.*

\* \* \* \* \*

#### Trading Sessions

Rule 7.34 (a)-(c)—No change.  
(d) Orders Permitted in Each Session.  
(1)—(No change.)  
(A)-(H)—(No change.)  
(2) During the Core Trading Session[,]:  
(A) M[arket] O[rders], Stop Orders, NOW Orders, PNP Orders and orders eligible for the Directed Order, Display Order, Working Order and Tracking Order Processes are eligible for entry into and execution on the Archipelago Exchange.

(B) *Users may enter Market-on-Close Orders, Limit-on-Close Orders, and*

<sup>45</sup> 15 U.S.C. 78s(b)(2).

<sup>46</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Peter D. Bloom, Managing Director, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 6, 2003 ("Amendment No. 1"). In Amendment No. 1, the PCX submitted a new Form 19b-4, which replaced the original filing in its entirety.

<sup>4</sup> See letter from Peter D. Bloom, Managing Director, Regulatory Policy, PCX, to Timothy Fox, Attorney, Division of Market Regulation, Commission, dated October 14, 2003 ("Amendment No. 2"). In Amendment No. 2, the PCX amended proposed PCXE Rule 7.35(g)(1) to clarify that Halt Auctions would be conducted pursuant to proposed PCXE Rules 7.35(g)(2) to (g)(6), and not pursuant to PCXE Rules 7.35(b) and (c), as previously cross-referenced. In addition, the PCX added the phrase "and an Indicative Match Price does not exist" to proposed PCXE Rule 7.35(g)(4)(A)(ii) for clarity, and to a related description contained Item 3 and

*Limited Price Orders beginning at 4:30 am (Pacific Time) and concluding at 1:00 pm (Pacific Time) for inclusion in the Closing Auction, except as provided in Rule 7.35(e)(2). Market-on-Close Orders and Limit-on-Close Orders are eligible for execution only during the Closing Auction. Market Orders are not eligible for execution in the Closing Auction.*

*(C) Market-on-Close Orders and Limit-on-Close Orders that are not executed during the Closing Auction shall be cancelled. Timed Orders designated as good from 1:00 pm (Pacific Time) shall not be eligible to participate in the Closing Auction.*

(3)—(No change.)

(e)—(f)—No change.

### **[Opening Session] Auctions**

Rule 7.35 (a)—(c)—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) Re-Opening Time. After trading in a security has been halted, the Corporation shall disseminate the estimated time at which trading in that security will re-open (the “Re-Opening Time”).]

[(2) Publication of Indicative Match Price and Imbalances]

[(A) Immediately after trading is halted in a security, and 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, the market order Imbalance associated with the Trading Halt 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 last price prior to the trading halt, 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.]

[(3) Reduction of Imbalances]

[(A) Any Imbalance in the Trading Halt Auction may be reduced by new orders, entered on the side of the market opposite the Imbalance, pursuant to the following priority:]

[(i) Market orders;]

[(ii) Limited Price Orders; and]

[(iii) Auction-Only Limit Orders.]

[(B) Primary Only Orders may be submitted to the Archipelago Exchange during a trading halt. Cleanup Orders are not eligible for execution in the Trading Halt Auction.]

[(C) The Corporation, if it deems such action necessary, will disseminate the time, prior to the time that orders are matched pursuant to the Trading Halt Auction, at which orders may no longer be cancelled.]

[(D) Interaction with ITS]

[(i) If a pre-opening indication is required pursuant to the ITS Plan, the Corporation will disseminate three minutes prior to the Re-Opening Time the applicable price range, consisting of the Indicative Match Price as one end of the price range and the Indicative Match Price plus an amount determined by the Corporation for the higher end of the price range.]

[(ii) The Archipelago Exchange will treat any responses to a pre-opening indication as an Auction-Only Limit Order.]

[(E) Other market centers may use private communication connections to enter Auction-Only Limit Orders for a Trading Halt Auction.]

[(4) Determination of Trading Halt Auction Price]

[(A) For exchange-listed securities:]

[(i) If there is no Imbalance and no other market center has re-opened trading in the security, orders will be executed in the Trading Halt Auction at the Indicative Match Price as of the Re-Opening Time.]

[(ii) If an Imbalance exists, or if an equilibrium exists between buy market orders and sell market orders, or if another market center has re-opened trading in the security, as many buy market orders and sell market orders as possible shall be matched, on a time priority basis, at the midpoint of the first uncrossed, unlocked NBBO, once an NBBO is available.]

[(B) For A Nasdaq Security:]

[(i) If there is no Imbalance, orders will be executed in the Trading Halt Auction at the Indicative Match Price as of the Re-Opening Time.]

[(ii) If an Imbalance exists, or if an equilibrium exists between buy market orders and sell market orders, as many buy market orders and sell market

orders as possible shall be matched, on a time priority basis, once an NBBO is available.]

[(a) at the midpoint of the NBBO at the Re-Opening Time, provided that the NBBO is not crossed; or]

[(b) at the midpoint of the first uncrossed NBBO after the Re-Opening Time, in the case in which the NBBO is crossed, but one side of the BBO is not crossed by the NBBO; or]

[(c) at the midpoint of the first uncrossed NBBO after the Re-Opening Time, in the case in] [which the NBBO is crossed and where both sides of the BBO are crossed by the NBBO; or]

[(d) at the bid (offer) of the BBO that was crossed prior to the Re-Opening Time, in the case in which the BBO is crossed by a market participant; or]

[(C) For those issues for which the Corporation is the primary market: Orders will be executed at the Indicative Match Price at the Re-Opening Time. If equilibrium exists between buy and sell market orders, the match price shall be at the last Corporation sale price in the security regardless of the trading session; however, if the last Corporation sale price is lower than the BBO, the match price shall be the displayed bid in the security, or if the last Corporation sale price is higher than the BBO, the match price will be the displayed offer in the security.]

[(5) If any orders are not executed in their entirety during the Trading Halt Auction, then such orders shall be executed in accordance with Rule 7.37 after the completion of the Trading Halt Auction.]

[(6) After the completion of the Trading Halt Auction, the Archipelago Exchange will re-open for trading the previously halted security in accordance with Rule 7.]

*(d) Transition to Core Trading Session.*

*(1) Limited Price Orders entered before 6:28 am (Pacific Time) shall participate in the Market Order Auction. Limited Price Orders designated for the Core Trading Session entered after 6:28 am (Pacific Time) shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.*

*(2) Market Orders entered after 6:28 am (Pacific Time) and before 6:30 am (Pacific Time), which are eligible for either the Market Order Auction or the Core Trading Session, shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later, unless otherwise provided in Rule 7.35(c)(2)(C).*

*(3) Stop Orders entered before or during the Opening Session become*

eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.

[(e) Transition to Core Trading Session.]

[(1) Limited Price Orders entered before 6:28 am (Pacific Time) shall participate in the Market Order Auction. Limited Price Orders designated for the Core Trading Session entered after 6:28 am (Pacific Time) shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.]

[(2) Market orders entered after 6:28 am (Pacific Time) and before 6:30 am (Pacific Time), which are eligible for either the Market Order Auction or the Core Trading Session, shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later, unless otherwise provided in Rule 7.35(c)(2)(C).]

[(3) Stop Orders entered before or during the Opening Session become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.]

(e) Closing Auction

(1) Publication of Indicative Match Price and Imbalances

(A) Beginning at 12:00 pm (Pacific Time), and updated real-time thereafter, the Indicative Match Price of the Closing Auction and the volume available to trade at such price, and the Imbalance associated with the Closing Auction, if any, will be, shall be published via electronic means. The Imbalance shall include both the Total Imbalance and Market Imbalance.

Example 1: (1) Limit-on-Close Order to buy 1000 shares at 50;

(2) Limit-on-Close Order to sell 5000 shares at 40; and

(3) Market-on-Close Order to sell 2000 shares.

The Archipelago Exchange will publish an Indicative Match Price of 40, a match volume of 1000 shares, a Market Imbalance of 1,000 shares and a Total Imbalance of 6,000 shares.

Example 2: (1) Market-on-Close Order to buy 3000 shares;

(2) Market-on-Close Order to sell 1000 shares;

(3) Limit Order to sell 1000 shares at 41; and

(4) Limit Order to sell 1000 shares at 41.25.

The Consolidated Tape last sale was 41.25. The Archipelago Exchange will publish an Indicative Match Price of 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.

(C) If the difference between the Indicative Match Price and the last sale during 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.

(2) Reduction of Imbalances

(A) Any Imbalance in the Closing Auction may be reduced by new orders, entered on the side of the market opposite the Imbalance, pursuant to the following priority:

(i) Market-on-Close Orders;

(ii) Limit orders entered prior to the Closing Auction; and

(iii) Limit-on-Close Orders.

(B) Between 12:58 pm (Pacific Time) and the conclusion of the Closing Auction, Limited Price Orders may be cancelled, but Market-on-Close Orders and Limit-on-Close Orders may not be cancelled.

(C) Between 12:58 pm (Pacific Time) and the conclusion of the Closing Auction, Market-on-Close Orders and Limit-on-Close Orders may not be entered on the same side as the Imbalance. Market-on-Close Orders and Limit-on-Close Orders that reduce the Imbalance may be entered on the opposite side of the Imbalance, however, any time before the Closing Auction. Market-on-Close Orders and Limit-on-Close Orders that create equilibrium and thereafter convert the Imbalance from a buy to a sell (or convert the Imbalance from a sell to a buy) Imbalance will be rejected.

Example: (1) Limit-on-Close Order to buy 1000 shares; (2) Limit-on-Close Order to sell 1500 shares, creating an Imbalance of 500 shares on the sell side. A Market-on-Close Order or Limit-on-Close Order to buy 500 shares would be permitted because it achieves equilibrium. However, a Market-on-Close Order or Limit-on-Close Order to buy 1000 shares would not be permitted as it would inverse the Imbalance of 500 shares on the buy side.

(3) Determination of Closing Auction Price

(A) If there is no Imbalance, orders will be executed in the Closing Auction at the Indicative Match Price as of 1:00 p.m. (Pacific Time).

(B) If an Imbalance exists, or if equilibrium exists between buy Market-on-Close Orders and sell Market-on-Close Orders and an Indicative Match Price does not exist, as many buy

Market-on-Close Orders and sell Market-on-Close Orders as possible shall be matched, on a time priority basis as follows:

(i) At the midpoint of the NBBO at 1:00 pm (Pacific Time), provided that the NBBO of the market centers that are still open is not locked or crossed; or

(ii) At the locked price if the NBBO is locked at 1:00 pm (Pacific Time); or

(iii) if the NBBO is crossed at 1:00 pm (Pacific Time) and the Archipelago Exchange is a party to the crossed market, at the bid (offer) side of the BBO which is crossed with the NBBO; or

(iv) if the NBBO is crossed at 1:00 pm (Pacific Time) and the Archipelago Exchange is not a party to the crossed market, at the last sale during the regular market hours as determined by the consolidated tape.

Such executions shall be designated with a modifier to identify them as Closing Auction trades. The Market-on-Close Orders that are eligible for, but not executed in, the Closing Auction shall be cancelled immediately upon conclusion of the Closing Auction.

[f] [Whenever in the judgment of the Corporation the interests of a fair and orderly market so require, the Corporation may adjust the timing of the auctions set forth in this Rule.]

(f) 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) Re-Opening Time. After trading in a security has been halted, the Archipelago Exchange shall disseminate the estimated time at which trading in that security will re-open (the "Re-Opening Time").

(A) For Nasdaq securities and securities that are dually listed on both Nasdaq and listed on the Corporation whereby trading in a security is halted and thereafter scheduled to reopen prior to 12:55 pm (Pacific Time), the Archipelago Exchange will conduct a Halt Auction pursuant to the applicable procedures set forth in subsection (f)(2) through (6) of this Rule.

(B) For Nasdaq securities and securities that are dually listed on both Nasdaq and listed on the Corporation whereby trading in a security is halted and thereafter scheduled to reopen at 12:55 pm (Pacific Time) or later, no Closing Auction will occur for that security. Instead, the Archipelago Exchange will conduct a Halt Auction pursuant to the applicable procedures set forth in subsection (f)(2) through (6) of this Rule.

(2) Publication of Indicative Match Price and Imbalances

(A) Immediately after trading is halted in a security, and updated real-time thereafter, the Indicative Match Price of the Trading Halt Auction and the volume available to trade at such price, shall be published via electronic means. If such a price does not exist, 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 updated real-time thereafter, the Market Imbalance and Total Imbalance associated with the Trading Halt Auction, if any, shall be published via electronic means.

(C) If the difference between the Indicative Match Price and the last price prior to the trading halt, 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.

(3) Reduction of Imbalances

(A) Any Imbalance in the Trading Halt Auction may be reduced by new orders, entered on the side of the market opposite the Imbalance, pursuant to the following priority:

- (i) Market Orders; and
- (ii) Limited Price Orders.

(B) Primary Only Orders may be submitted to the Archipelago Exchange during a trading halt. Cleanup Orders are not eligible for execution in the Trading Halt Auction.

(C) The Corporation, if it deems such action necessary, will disseminate the time, prior to the time that orders are matched pursuant to the Trading Halt Auction, at which orders may no longer be cancelled.

(D) Interaction with ITS

(i) If a pre-opening indication is required pursuant to the ITS Plan, the Corporation will disseminate three minutes prior to the Re-Opening Time the applicable price range, consisting of the Indicative Match Price as one end of the price range and the Indicative Match Price plus an amount determined by the Corporation for the higher end of the price range.

(ii) The Archipelago Exchange will treat any responses to a pre-opening indication as an Auction-Only Limit Order.

(E) Other market centers may use private communication connections to enter Auction-Only Limit Orders for a Trading Halt Auction.

(4) Determination of Trading Halt Auction Price

(A) For exchange-listed securities:

(i) If there is no Imbalance and no other market center has re-opened

trading in the security, orders will be executed in the Trading Halt Auction at the Indicative Match Price as of the Re-Opening Time.

(ii) If an Imbalance exists, or if an equilibrium exists between buy market orders and sell market orders and an Indicative Match Price does not exist, or if another market center has re-opened trading in the security, as many buy market orders and sell market orders as possible shall be matched, on a time priority basis, at the midpoint of the first uncrossed, unlocked NBBO, once an NBBO is available.

(B) For Nasdaq securities:

(i) If there is no Imbalance, orders will be executed in the Trading Halt Auction at the Indicative Match Price as of the Re-Opening Time.

(ii) If an Imbalance exists, or if equilibrium exists between buy market orders and sell market orders, as many buy market orders and sell market orders as possible shall be matched, on a time priority basis, once an NBBO is available,

(a) at the midpoint of the NBBO at the Re-Opening Time, provided that the NBBO is not crossed; or

(b) at the midpoint of the first uncrossed NBBO after the Re-Opening Time, in the case in which the NBBO is crossed, but one side of the BBO is not crossed by the NBBO; or

(c) at the midpoint of the first uncrossed NBBO after the Re-Opening Time, in the case in which the NBBO is crossed and where both sides of the BBO are crossed by the NBBO; or

(d) at the bid (offer) of the BBO that was crossed prior to the Re-Opening Time, in the case in which the BBO is crossed by a market participant; or

(C) For those issues for which the Corporation is the primary market: Orders will be executed at the Indicative Match Price at the Re-Opening Time. If equilibrium exists between buy and sell Market Orders, the match price shall be at the last Corporation sale price in the security regardless of the trading session; however, if the last Corporation sale price is lower than the BBO, the match price shall be the displayed bid in the security, or if the last Corporation sale price is higher than the BBO, the match price will be the displayed offer in the security.

(5) If any orders are not executed in their entirety during the Trading Halt Auction, then such orders shall be executed in accordance with Rule 7.37 after the completion of the Trading Halt Auction.

(6) After the completion of the Trading Halt Auction, the Archipelago Exchange will re-open for trading the

previously halted security in accordance with Rule 7.

(g) Whenever in the judgment of the Corporation the interests of a fair and orderly market so require, the Corporation may adjust the timing of the auctions set forth in this Rule.

\* \* \* \* \*

## II. Description of the Proposed Rule Change

The PCX, through its wholly-owned subsidiary PCXE, proposes to introduce the Closing Auction, which would apply to both Nasdaq and exchange-listed securities traded on ArcaEx. The Closing Auction would take place at the end of the Core Trading Session. As originally proposed, the Closing Auction would occur at 1:02 pm (Pacific Time). In Amendment No. 3, the PCX proposes to change the Closing Auction Time to 1:00 pm (Pacific Time). The PCX also proposes to implement two new order types, designated as a MOC Order<sup>7</sup> and a LOC Order,<sup>8</sup> which would be eligible for execution only during the Closing Auction. In Amendment No. 3, the PCX clarified that these two order types would occur during the Core Trading Session.

Before the start of the Closing Auction, ArcaEx would publish the Indicative Match Price,<sup>9</sup> the volume of MOC and LOC orders that have been matched for execution, as well as the Market Imbalance and Total Imbalance relative to the Closing Auction.<sup>10</sup> In Amendment No. 3, the PCX amended the definition of "Market Imbalance" to clarify that MOC order that are not yet matched for execution would be published as the "Market Imbalance" during the time leading up to the Closing Auction. Accordingly, beginning at 12:00 pm (Pacific Time), and updated on real-time basis thereafter, the Indicative Match Price of the Closing Auction and the volume available to trade at such price, along with the Market Imbalance and Total Imbalance associated with the Closing Auction, if any, would be published via electronic means by ArcaEx.

If the difference between the Indicative Match Price and the last sale during normal market hours, as determined by the consolidated tape,

<sup>7</sup> See proposed PCXE Rule 7.31(dd) (definition of MOC Order).

<sup>8</sup> See proposed PCXE Rule 7.31(ee) (definition of LOC Order).

<sup>9</sup> See PCXE Rule 1.1(r). Pursuant to this current proposed rule change, the definition of "Indicative Match Price" in PCXE Rule 1.1(r) would be changed to reflect the inclusion of the Closing Auction.

<sup>10</sup> The proposed rule change also provides for the publication of the Indicative Match Price and Imbalance following a trading halt.

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.<sup>11</sup> 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.<sup>12</sup> However, any time before the Closing Auction, MOC Orders and LOC Orders that create equilibrium and thereafter increase the Imbalance would be rejected.<sup>13</sup> 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).<sup>14</sup> 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")<sup>15</sup> 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")<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup>

### 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 exchange<sup>19</sup> and, in particular, the requirements of Section 6(b) of the Act<sup>20</sup> 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,<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup> 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

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

<sup>12</sup> *Id.*

<sup>13</sup> 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.

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

<sup>15</sup> See PCXE Rule 1.1(dd) (definition of NBBO).

<sup>16</sup> See PCXE Rule 1.1(h) (definition of BBO).

<sup>17</sup> See *supra* note 14.

<sup>18</sup> See proposed PCXE Rule 7.35(f)(1).

<sup>19</sup> 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).

<sup>20</sup> 15 U.S.C. 78f(b).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> 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.

<sup>23</sup> 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).

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

Commission notes that the original proposal, which was published for the full comment period, elicited no public comment. Accordingly, the Commission believes that there is good cause, consistent with Section 19(b)(2) of the Act,<sup>25</sup> to approve Amendment No. 3 to the PCX's proposed rule change on an accelerated basis.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 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](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-PCX-2003-24. 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 hardcopy 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 also will be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-2003-24 and should be submitted by [insert date 21 days from date of publication].

#### V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>26</sup> that the proposed rule change, (File No. SR-PCX-2003-24), as amended by Amendments No. 1 and 2, is approved, and Amendment No. 3 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>27</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-30838 Filed 12-12-03; 8:45 am]

BILLING CODE 8010-01-P

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48884; File No. SR-PHLX-2003-66]

#### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 and Notice of Filing Order Granting Accelerated Approval to Amendment No. 3 by the Philadelphia Stock Exchange, Inc., Relating to the Listing and Trading of Options on the Nasdaq Composite Index®

December 5, 2003.

#### I. Introduction

On September 29, 2003, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to list and trade cash-settled, European-style options on the Nasdaq Composite Index® (the "Nasdaq Composite Index" or "Index"), a capitalization-weighted, A.M.-settled index comprised of approximately 3,400 stocks listed and traded on The Nasdaq Stock Market, Inc. ("Nasdaq"). The PHLX filed Amendment Nos. 1 and 2 to the proposal on October 17, 2003,<sup>3</sup> and filed Amendment No. 3 to the proposal on November 13, 2003.<sup>4</sup>

<sup>27</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Mark I. Salvacion, Director and Counsel, PHLX, to Kelly Riley, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated October 17, 2003 ("Amendment No. 1"); and letter from Mark I. Salvacion, Director and Counsel, PHLX, to Yvonne Fraticelli, Special Counsel, Division, Commission, dated October 17, 2003 ("Amendment No. 2"). In Amendments No. 1, the PHLX revises the position and exercise limits for the proposed options. In Amendments No. 2, the PHLX proposes to list mini-FLEX options on the Nasdaq Composite Index and provides an example of how the proposed mini-FLEX options could be used.

<sup>4</sup> See letter from Mark I. Salvacion, Director and Counsel, PHLX, to Kelly Riley, Senior Special Counsel, Division, Commission, dated November 12, 2003 ("Amendment No. 3"). In Amendment No. 3, the PHLX represents that the PHLX will notify the staff of the Commission if: (1) Less than 80% of the weight of the Index is options eligible; (2) 10% of the weight of the Index is represented by

The proposed rule change and Amendment Nos. 1 and 2 were published for comment in the **Federal Register** on October 24, 2003.<sup>5</sup> The Commission received two comment letters regarding the proposal.<sup>6</sup> On November 21, 2003, the PHLX submitted a letter responding to the issues raised in the comment letters.<sup>7</sup> This order approves the proposed rule change, as amended. In addition, the Commission is publishing notice to solicit comments on and is simultaneously approving, on an accelerated basis, Amendment No. 3.

#### II. Description of the Proposal

The PHLX proposes to list and trade cash-settled options on the Index. In addition trading full-size options on the Index ("Full-Size Index Options"), the PHLX proposes to trade mini Index options that are 1/10th the size of Full-Size Index Options ("Mini Index Options"), Flexible Exchange Index ("FLEX®") options on the Index ("FLEX Index Options"), and mini-FLEX Index Options ("Mini-Flex Index Options") (the Full-Size Index Options, Mini Index Options, FLEX Index Options, and Mini-Flex Index Options may be referred to, collectively, as the "Index Options").<sup>8</sup> The PHLX will trade the Index Options pursuant to current PHLX rules governing the trading of index options.<sup>9</sup> The PHLX's current rules applicable to the trading of FLEX index options, including the requirement that the minimum size of a Request-for-Quote ("RFQ") be \$10

stocks trading less than 20,000 shares per day; or (3) the largest component of the Index comprises 15% of the weight of the Index, or the top five components comprise 50% of the weight of the Index.

<sup>5</sup> See Securities Exchange Act Release No. 48663 (October 20, 2003), 68 FR 61029.

<sup>6</sup> See letter from Kathryn L. Beck, Senior Vice President, General Counsel, Corporate Secretary, and Chief Regulatory Officer, Pacific Exchange, Inc. ("PCX"), to Margaret H. McFarland, Deputy Secretary, Commission, dated October 24, 2003 ("PCX Letter"); and letter from Michael J. Simon, Senior Vice President and Secretary, International Securities Exchange, Inc. ("ISE"), to Jonathan G. Katz, Secretary, Commission, dated November 10, 2003 ("ISE Letter").

<sup>7</sup> See letter from Mark Salvacion, Director and Counsel, PHLX, to Kelly Riley, Senior Special Counsel, Division, Commission, dated November 21, 2003 ("PHLX Letter").

<sup>8</sup> The Full-Size Index Options and the Mini Index Options will feature European-style exercise. The FLEX Index Options and the Mini-Flex Index Options may feature American-style exercise or European-style exercise. See PHLX Rule 1079(a)(5).

<sup>9</sup> See, particularly, PHLX Rules 1000A through 1102A (Rules Applicable to Trading of Options on Indices) and, generally, PHLX Rules 1000 through 1090 (Options Rules of the PHLX).

<sup>25</sup> 15 U.S.C. 78s(b)(2).

<sup>26</sup> *Id.*