

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48630; File No. SR-PCX-2003-24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Thereto, by the Pacific Exchange, Inc. Relating to Implementation of a Closing Auction for the Archipelago Exchange and the Establishment of Two New Order Types

October 15, 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 June 2, 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 the PCX has prepared. On October 7, 2003, the PCX submitted Amendment No. 1 to the proposed rule change.³ On October 15, 2003, the PCX submitted Amendment No. 2 to the proposed rule change.⁴ 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 adopt new rules for the implementation of a new order auction entitled “Closing Auction” for Nasdaq and exchange-listed securities traded on the Archipelago Exchange (“ArcaEx”), the equities trading facility of PCXE. The proposal also introduces two new

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 October 6, 2003 (“Amendment No. 1”). In Amendment No. 1, the PCX submitted a new Form 196-4, which replaced the original filing in its entirety.

⁴ 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 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).

order types called Market-on-Close Order and Limit-on-Close Order that would be eligible for execution only during the Closing Auction.

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

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Exhibit A

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, 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.

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.

Limited Price Order

(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.)

(2)—(No change.)

(3) During the Late Trading Session:

(A)—(No change.)

(B) *Users may enter Market-on-Close Orders or Limit-on-Close Orders beginning at 4:30 a.m. (Pacific Time) and concluding at 1:02 p.m. (Pacific Time) for inclusion in the Closing Auction, except as provided in Rule 7.35(e)(3). Market-on-Close Orders and Limit-on-Close Orders are eligible for execution only during 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 1:02 pm (Pacific Time) shall not be eligible to participate in the Closing Auction.*

(D)[(B)] Market orders and Stop Orders are not eligible for execution during the Late Trading Session.

(E)[(C)] The Directed Order and Tracking Order Processes are not available during the Late Trading Session.

(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.

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, and an Imbalance of 1000 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 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 designated for the Late Trading Session and entered prior to the Closing Auction; and

(iii) Limit-on-Close Orders.

(B) Between 1:00 pm (Pacific Time) and the conclusion of the Closing Auction, Limited Price Orders eligible for the Late Trading Session may be cancelled, but Market-on-Close Orders and Limit-on-Close Orders may not be cancelled.

(C) Between 1:00 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 sell side to an 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 1:02 pm (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:

(i) At the midpoint of the NBBO at 1:02 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 1:02 pm (Pacific Time); or

(iii) if the NBBO is crossed at 1:02 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 1:02 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; or 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) Transition to Late Trading Session. Limited Price Orders designated for the Late Trading Session entered before 1:00 pm (Pacific Time) shall participate in the Closing Auction. Limited Price Orders designated for the Late Trading Session entered after 1:00 pm (Pacific Time) shall become eligible for execution at 1:02 pm (Pacific Time) or at the conclusion of the Closing Auction, whichever is later.

(g) 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 (g)(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 (g)(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 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.

(h) 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.

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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

The PCX proposes to amend PCXE Rule 7.35 to introduce the Closing Auction, which would apply to both Nasdaq and exchange-listed securities

traded on ArcaEx.⁵ The Closing Auction would take place following the Core Trading Session. The Closing Auction would occur at 1:02 p.m. (Pacific Time). The PCX also proposes to amend PCXE Rule 7.31 to implement two new order types designated as a Market-on-Close Order⁶ and Limit-on-Close Order,⁷ and to amend PCXE Rule 7.34 to clarify that these two new order types are eligible for execution during the Late Trading Session. Market-on-Close Orders and Limit-on-Close Orders would be eligible for execution only during the Closing Auction. Any Market-on-Close Order or Limit-on-Close Order that is not executed during the Closing Auction would be cancelled. Market-on-Close Orders and Limit-on-Close Orders that are designated as Timed Orders⁸ and designated as good from 1:02 p.m. (Pacific Time) would not be eligible for execution during the Closing Auction.

Under proposed PCXE Rule 7.35(e), ArcaEx would publish the Indicative Match Price,⁹ the matched volume and Imbalance relative to the Closing Auction.¹⁰ Accordingly, beginning at 12:00 p.m. (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, would be published via electronic means by the PCX. The following are examples of the foregoing:

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

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

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

In this example, ArcaEx would publish an Indicative Match Price of 40, a match volume of 1000 shares, and an Imbalance of 1000 shares.

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

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

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

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

In this example, ArcaEx would publish an Indicative Match Price of 41.25 and a match

⁵ See PCXE Rule 1.1(aa) (definition of "Nasdaq Security").

⁶ See proposed PCXE Rule 7.31(dd) (definition of Market-on-Close Order ("MOC")).

⁷ See proposed PCXE Rule 7.31(ee) (definition of Limit-on-close Order ("LOC")).

⁸ See PCXE Rule 1.1(q) (definition of "Timed Order").

⁹ 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.

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

volume of 3000 shares, but would not publish an Imbalance.

If an Indicative Match Price does not exist, ArcaEx would indicate, via electronic means, that such a price does not exist.

If the difference between the Indicative Match Price and the last sale during normal market hours, as determined by the consolidated tape, were equal to or greater than a predetermined amount, as determined from time to time by the PCXE, ArcaEx would assign a "SIG" designator to the Indicative Match Price and publish the designator via electronic means as determined by the PCXE.

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: (1) Market-on-Close Orders; (2) Limited Priced Orders designated for the Late Trading Session and entered prior to the Closing Auction; and (3) Limit-on-Close Orders.

Between 1:00 p.m. (Pacific Time) and the conclusion of the Closing Auction, Limited Price Orders eligible for the Late Trading Session may be cancelled, but Market-on-Close Orders and Limit-on-Close Orders may not be cancelled. In addition, between 1:00 p.m. (Pacific Time) and the conclusion of the Closing Auction, 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 increase the Imbalance would be rejected.¹¹

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 1:02 p.m. (Pacific Time.) Conversely, 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 would be matched, on a time priority

¹¹ Market-on-Close Orders and Limit-on-Close Orders that are of a size to "flip" the Imbalance from a buy to a sell would be rejected. The following is an example of the foregoing: (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 invert the Imbalance of 500 shares on the sell side to an Imbalance of 500 shares on the buy side.

basis as follows: (1) At the midpoint of the NBBO¹² at 1:02 p.m. (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 1:02 p.m. (Pacific Time); or (3) if the NBBO is crossed at 1:02 p.m. (Pacific Time) and ArcaEx is a party to the crossed market, at the bid (offer) side of the BBO¹³ which is crossed with the NBBO; or (4) if the NBBO is crossed at 1:02 p.m. (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. Such executions would 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, would be cancelled immediately upon conclusion of the Closing Auction.

Limited Price Orders designated for the Late Trading Session entered before 1 p.m. (Pacific Time) would participate in the Closing Auction. Limited Price Orders designated for the Late Trading Session entered after 1 p.m. (Pacific Time) would become eligible for execution at 1:02 p.m. (Pacific Time) or at the conclusion of the Closing Auction, whichever is later.

Finally, the PCX proposes that in the event a stock is halted and scheduled to re-open prior to 12:55 p.m. (Pacific Time), a Halt Auction and Closing Auction would be conducted. However, in the event a stock is halted and is thereafter scheduled to re-open at 12:55 p.m. (Pacific Time) or later, no Closing Auction would occur for that security. Instead, a Halt Auction would be conducted.¹⁴

The proposed rule change, as amended, is intended to expand the trading auction process by adding the Closing Auction to the Late Trading Session and to clarify the type of orders available for execution during the Late Trading Session.

2. Statutory Basis

The PCX believes that the proposed rule change, as amended, is consistent with Section 6(b)¹⁵ of the Act, in general, and furthers the objectives of Section 6(b)(5),¹⁶ in particular, 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, and 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, 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, as amended.

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.

¹² See PCXE Rule 1.1(dd) (definition of "national best bid or offer" ("NBBO")).

¹³ See PCXE Rule 1.1(h) (definition of "best bid or offer" ("BBO")).

¹⁴ See proposed PCXE Rule 7.3(g)(1).

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

SR-PCX-2003-24 and should be submitted by November 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-26645 Filed 10-21-03; 8:45 am]

BILLING CODE 8010-01-U

SOCIAL SECURITY ADMINISTRATION

Office of the Commissioner; Cost-of-Living Increase and Other Determinations for 2004

AGENCY: Social Security Administration.
ACTION: Notice.

SUMMARY: The Commissioner has determined—

(1) A 2.1 percent cost-of-living increase in Social Security benefits under title II of the Social Security Act (the Act), effective for December 2003;

(2) An increase in the Federal Supplemental Security Income (SSI) monthly benefit amounts under title XVI of the Act for 2004 to \$564 for an eligible individual, \$846 for an eligible individual with an eligible spouse, and \$282 for an essential person;

(3) The student earned income exclusion to be \$1,370 per month in 2004 but not more than \$5,520 in all of 2004;

(4) The dollar fee limit for services performed as a representative payee to be \$31 per month (\$59 per month in the case of a beneficiary who is disabled and has an alcoholism or drug addiction condition that leaves him or her incapable of managing benefits) in 2004;

(5) The national average wage index for 2002 to be \$33,252.09;

(6) The Old-Age, Survivors, and Disability Insurance (OASDI) contribution and benefit base to be \$87,900 for remuneration paid in 2004 and self-employment income earned in taxable years beginning in 2004;

(7) The monthly exempt amounts under the Social Security retirement earnings test for taxable years ending in calendar year 2004 to be \$970 and \$2,590;

(8) The dollar amounts (“bend points”) used in the primary insurance amount benefit formula for workers who become eligible for benefits, or who die before becoming eligible, in 2004 to be \$612 and \$3,689;

(9) The dollar amounts (“bend points”) used in the formula for computing maximum family benefits for workers who become eligible for

benefits, or who die before becoming eligible, in 2004 to be \$782, \$1,129, and \$1,472;

(10) The amount of taxable earnings a person must have to be credited with a quarter of coverage in 2004 to be \$900;

(11) The “old-law” contribution and benefit base to be \$65,100 for 2004;

(12) The monthly amount deemed to constitute substantial gainful activity for statutorily blind individuals in 2004 to be \$1,350, and the corresponding amount for non-blind disabled persons to be \$810;

(13) The earnings threshold establishing a month as a part of a trial work period to be \$580 for 2004; and

(14) Coverage thresholds for 2004 to be \$1,400 for domestic workers and \$1,200 for election workers.

FOR FURTHER INFORMATION CONTACT:

Jeffrey L. Kunkel, Office of the Chief Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-3013. Information relating to this announcement is available on our Internet site at <http://www.socialsecurity.gov/OACT/COLA/index.html>. For information on eligibility or claiming benefits, call 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION: In

accordance with the Act, the Commissioner must publish within 45 days after the close of the third calendar quarter of 2003 the benefit increase percentage and the revised table of “special minimum” benefits (section 215(i)(2)(D)). Also, the Commissioner must publish on or before November 1 the national average wage index for 2002 (section 215(a)(1)(D)), the OASDI fund ratio for 2003 (section 215(i)(2)(C)(ii)), the OASDI contribution and benefit base for 2004 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 2004 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 2004 (section 203(f)(8)(A)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or die in 2004 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 2004 (section 203(a)(2)(C)).

Cost-of-Living Increases

General

The next cost-of-living increase, or automatic benefit increase, is 2.1 percent for benefits under titles II and XVI of the Act. Under title II, OASDI benefits will increase by 2.1 percent for individuals eligible for December 2003 benefits, payable in January 2004. This increase is based on the authority contained in section 215(i) of the Act (42 U.S.C. 415(i)).

Under title XVI, Federal SSI payment levels will also increase by 2.1 percent effective for payments made for the month of January 2004 but paid on December 31, 2003. This is based on the authority contained in section 1617 of the Act (42 U.S.C. 1382f).

Automatic Benefit Increase Computation

Under section 215(i) of the Act, the third calendar quarter of 2003 is a cost-of-living computation quarter for all the purposes of the Act. The Commissioner is, therefore, required to increase benefits, effective for December 2003, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act, and to increase maximum benefits payable to a family. For December 2003, the benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the third quarter of 2002 to the third quarter of 2003.

Section 215(i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetic mean of this index for the 3 months in that quarter. We round the arithmetic mean, if necessary, to the nearest 0.1. The Department of Labor’s Consumer Price Index for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 2002, is: for July 2002, 176.1; for August 2002, 176.6; and for September 2002, 177.0. The arithmetic mean for this calendar quarter is 176.6. The corresponding Consumer Price Index for each month in the quarter ending September 30, 2003, is: for July 2003, 179.6; for August 2003, 180.3; and for September 2003, 181.0. The arithmetic mean for this calendar quarter is 180.3. Thus, because the Consumer Price Index for the calendar quarter ending September 30, 2003, exceeds that for the calendar quarter ending September 30, 2002 by 2.1 percent (rounded to the nearest 0.1), a cost-of-living benefit increase of 2.1 percent is effective for benefits under title II of the Act beginning December 2003.

¹⁷ 17 CFR 200.30-3(a)(12).