

methodology through dissemination of an information circular.

### III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the Act<sup>9</sup> and in particular, with Section 6(b) of the Act.<sup>10</sup> Specifically, the Commission believes that the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general to protect investors and the public interest in that the use of more samples in arriving at the settlement value should be a more accurate method of calculating the average of these individual index values.

In particular, the Commission notes that the original approval order for the Index options<sup>11</sup> permitted a similar Index average price methodology to be used for Index options settlement purposes. While the time period for averaging the Index values is reduced by ten minutes (changing from 12:30–1:00 C.E.T. to 12:40–1:00 C.E.T.), because the new settlement Index value will be calculated using Index values reported every 15 seconds, rather than values reported every five minutes, there will be a much larger sample of index values that will be averaged for settlement purposes. Moreover, removing the twelve highest and twelve lowest prices from the index settlement value calculation should help to ensure that the settlement value is not affected by temporary highs and lows in the Index's value. The Commission also believes the proposed methodology should contribute to the maintenance of fair and orderly markets by eliminating potential disparities between the settlement values of Index options traded on the Amex and options and futures contracts on the same index traded on other markets. Furthermore, the Exchange will issue a regulatory circular to its membership concerning the new settlement methodology in order to avoid investor confusion. Finally, the Commission notes that no outstanding Index options will be affected by the change.<sup>12</sup>

<sup>9</sup>In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> See *supra* note 6.

<sup>12</sup> The Exchange has represented that all currently outstanding options on the Index will expire on or before December 1998.

The Commission finds good cause for approving the proposal, as amended, prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. As discussed above, the proposal refines the way existing settlement values are calculated for the Index by providing more prices to be used in calculating the Index's settlement value. Further, accelerated approval will permit the Exchange to implement the new settlement methodology starting with options that begin trading on September 21, 1998 and ensures that no options utilizing the old settlement methodology will be outstanding after the December 1998 expiration. In addition, the Commission believes that the proposed settlement value does not present any new or novel regulatory issues. Finally, there were no comments from the public on the proposal during the 21 day comment period. Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change, including Amendment No. 1, on an accelerated basis.

### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change, as amended (SR-Amex-98-27), is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40443; File No. SR-NASD-98-67]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Policies Regarding Authority Over American Stock Exchange LLC and Composition of Board of Governors of American Stock Exchange LLC

September 16, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),<sup>1</sup> notice is hereby given that on September 14, 1998, the National Association of Securities Dealers, Inc. ("NASD" or

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

"Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The NASD filed an amendment to the filing on September 16, 1998.<sup>2</sup> 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 NASD has filed a proposed rule change to state two policies regarding NASD's oversight of American Stock Exchange LLC ("Amex LLC") and the composition of the Board of Governors of Amex LLC. Below is the text of the proposed rule change:

#### Policy With Respect to Authority Over American Stock Exchange LLC

Under the Transaction Agreement dated as of May 8, 1998, by and among the NASD, American Stock Exchange, Inc., and certain other related parties (the "Transaction Agreement" and, together with the agreements and other documents attached thereto, the "Transactional Documents"), Amex LLC will be and remain a self-regulatory organization registered under Section 6 of the Act, and as such will have statutory authority and responsibility over, among other things, the disciplining of its members, the amendment, repeal or addition of provisions to its Constitution and Rules (subject only to the power of the NASD to withhold consent to any such action affecting the Constitution of Amex LLC), the listing and delisting of securities, the grant or denial of membership in Amex LLC and approval of status as an approved person or allied member, and the grant or denial of access of facilities of and services offered by Amex LLC, all subject to the power of the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the "Act").

Subject to the terms and conditions of the Transactional Documents, the NASD will enjoy a controlling interest in Amex LLC, including in the selection of a majority of the Amex LLC Board of Governors and, through its influence over the Board of Governors, in the allocation of the resources of Amex LLC.

<sup>2</sup> See Letter to Katherine England, Commission, from T. Grant Callery, NASD, dated September 16, 1998 ("Amendment No. 1"). Amendment No. 1 replaces entirely the Exhibit No. 1 originally submitted with the rule filing.

As the parent company of Amex LLC, the NASD will be responsible to ensure that Amex meets its obligations as a self-regulatory organization. It will be the policy of the NASD that in discharging that responsibility the NASD will be governed by the following principles:

1. The NASD will exercise its powers and its managerial influence to ensure that the Amex LLC fulfills its self-regulatory obligations by:

Directing Amex LLC to take action necessary to effectuate its purposes and functions as a national securities exchange operating pursuant to the Act; and Ensuring that Amex LLC has and appropriately allocates such financial, technological, technical, and personnel resources as may be necessary or appropriate to meet its obligations under the Act.

2. The NASD will refrain from taking any action with respect to Amex LLC that, to the best of its knowledge, would impede, delay, obstruct, or conflict with efforts by Amex LLC to carry out its self-regulatory obligations under the Act and the rules and regulations thereunder.

#### **Policy With Respect to Composition of Board of Governors of American Stock Exchange LLC**

Section 9.12(d) of the Transaction Agreement dated as of May 8, 1998, by and among the NASD, American Stock Exchange, Inc., and certain other related parties (the "Transaction Agreement") and Article II, Sec. 04(a)(4) of the Constitution of American Stock Exchange LLC ("Amex LLC") provide that the Board of Governors of Amex LLC will include two representatives of NASD staff appointed by the NASD.

To assure substantial and meaningful input by the public in the governance of Amex LLC the NASD will use its appointment power to fill one of those two positions with a representative of the staff who is not an employee of and has no material business relationship with a broker or dealer or with the NASD, NASD Regulations, The Nasdaq Stock Market, or Amex LLC, but who be an officer or employee of an issuer of securities listed on Nasdaq or Amex LLC or traded in the over-the-counter market.

\* \* \* \* \*

#### **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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text

of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 proposed rule change has two purposes. First, with regard to NASD's authority over Amex LLC (the successor operating organization to the American Stock Exchange), the proposed rule change is intended to clarify the NASD's intent that, upon closing of the Transaction Agreement dated as of May 8, 1998, by and among the NASD, the American Stock Exchange, Inc., and certain other related parties, the NASD will be responsible to ensure that Amex LLC will fulfill its self-regulatory obligations and will have the resources necessary for it to do so.

Second, with regard to the composition of the Board of Governors of Amex LLC, the proposed rule change is intended to ensure sufficient non-Industry representation on that Board.

#### **Summary of Proposed Rule Change**

##### **Policy With Respect to Authority Over American Stock Exchange LLC**

This part of the proposed rule change sets forth certain principles that will guide the NASD in its fulfillment of its responsibilities as parent company of Amex LLC with ultimate responsibility for Amex LLC's compliance with its statutory responsibilities as a self-regulatory organization.

##### **Policy With Respect to Composition of Board of Governors of American Stock Exchange LLC**

This part of the proposed rule change states the NASD's policy that, in order to assure substantial and meaningful input by persons outside the securities industry in the governance of Amex LLC, the NASD will appoint as one of the two representatives of NASD staff on the Amex LLC Board of Governors, a person who is not an employee of and has no material business relationship with a broker or dealer or with the NASD, NASD Regulation, The Nasdaq Stock Market, or Amex LLC, but who may be an officer or employee of an issuer of securities listed on Nasdaq or Amex LLC or traded in the over-the-counter market.

##### **2. Statutory Basis**

NASD believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(2) and 15A(b)(4) of the Act, which require, among other things, that the NASD's rules must be designed to carry out the purposes of the Act, and to assure a fair representation of its members in the administration of its affairs.

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

The Association does not believe that the proposed rule change will impose any inappropriate burden on competition.

##### **C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others**

No written comments were either solicited or received.

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

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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. 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 at the Commission's Public Reference Room located at the above address. Copies of such filing will also be

available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-98-67 and should be submitted by October 15, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>3</sup>

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40449; File No. SR-PCX-98-46]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Guidelines for Consolidation of Specialist Posts

September 17, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on September 17, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by PCX. 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

PCX is proposing to adopt formal guidelines to be used by the Equity Floor Trading Committee ("EFTC") in determining whether to allow specialist firms to consolidate their specialist posts. These standards are intended to give the EFTC greater guidance in exercising its existing authority to supervise and approve the consolidation of specialist posts on the Equity Floors of the Exchange.

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

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements

may be examined at the places specified in Item IV below. 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 EFTC has been responsible for approving requests of specialist firms to transfer issues inter-firm or intra-firm, including requests of specialist firms to consolidate their posts.<sup>2</sup> Under this long-standing authority of the EFTC to review intra-firm transfers, including the consolidation of specialist posts, the EFTC supervises and approves the transfer of issues on the floor when a member firm has relinquished one or more of its specialist posts. It has also approved the intra-firm transfer of stocks, for example, a firm with five posts may obtain EFTC approval to "collapse" one post and redistribute its stocks to the remaining four posts.<sup>3</sup>

The Exchange believes that a number of specialist firms will be interested in collapsing their posts. In light of several such requests to collapse posts, the Exchange is now proposing to provide the EFTC with specific guidelines and procedures to use when considering member firms' requests to consolidate their specialist posts. Specifically, in the approval process, the EFTC will consider: (a) whether the firm has provided the Exchange with economic or business justification for consolidating its posts; (b) whether the firm has demonstrated to the EFTC that

<sup>2</sup> See PCX Constitution, Art. IV, Section 6(a), which provides that the EFTC "shall be responsible for the general supervision of the dealings of members on the Equity Floor. It shall make and recommend to the Board of Governors for adoption such rules as it may deem necessary for the fair and orderly transaction of business upon the Equity Trading Floor." See also Section 6(b), which provides in part that "[it] shall be the duty of the [EFTC] to . . . supervise the conduct of members on the floor and their use of floor facilities [and to] recommend to the Board of Governors: (i) the creation of specialist posts, and (ii) the appointment of specialists." See also PCX Rule 11.4, which provides in part that "[e]ach committee shall have such other powers and duties as may be delegated to it by the Board of Governors."

<sup>3</sup> Although the EFTC is responsible for overseeing the transfer of issues in these situations, the Equity Allocation Committee continues to be responsible for allocating stocks, in general, or reallocating stocks for performance reasons. See PCX Constitution, Art. IV, Section 5(b); PCX Rules 5.37(j) and 5.37(s). The Exchange notes that parallel rules and procedures exist with respect to Options Floor realignment of Options Market Maker posts on the floor and the reallocation of option issues on the Options Trading Floor. See PCX Constitution, Art. IV, Section 8(a)-(c); and PCX Rules 6.82(e)-(f) and 11.10(c).

it will provide adequate staffing and an adequate capital commitment to handle the merged posts; and (c) whether the firm should relinquish some of its specialty stocks (or reallocate them among its remaining posts) to be able to handle the increased market making load as a precondition of effecting a post consolidation.<sup>4</sup>

The Exchange believes that the proposed guidelines take into account the types of information necessary for the EFTC to review when considering requests for consolidation of specialist posts. Specifically, in reviewing particular member firm applications that provide the relevant information, the EFTC will be in a position to determine whether, after a post consolidation, a given specialist firm will have the resources necessary to fulfill its market making responsibilities, to make deep and liquid markets, and to provide timely executions of customer orders.

##### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)<sup>5</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>6</sup> in particular, because it is designed to facilitate transactions in securities, promote just and equitable principles of trade, and to protect investors and the public interest.

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

The Exchange 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

Written comments on the proposed rule change were neither solicited nor received.

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

The foregoing rule change is concerned solely with the administration of the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(iii)<sup>7</sup> of the Act and subparagraph (e)(3) of Rule 19b-4

<sup>4</sup> The Exchange intends to disseminate a Regulatory Bulletin to notify its Members and Member firms of these new guidelines.

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

<sup>6</sup> 15 U.S.C. 78f(5).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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

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