

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

The Exchange believes that the proposed fee change will not 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 Exchange has not solicited comments regarding the proposed Rule Change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁵ and subparagraph (e)(2) of Rule 19b-4 thereunder.⁶ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.⁷

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All

submissions should refer to File No. SR-NYSE-98-43 and should be submitted by January 28, 1999.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40837; File No. SR-NYSE-98-29]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. to Adopt Exchange Rule 437 ("Participation in Year 2000 Testing")

December 28, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 17, 1998, as amended on December 23, 1998,³ the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal and Amendment No. 1 thereto on an accelerated basis.

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

The proposal consists of the adoption of new Rule 437 ("Participation In Year 2000 Testing").

The text of the proposed rule change is below. Proposed new language is italicized.

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⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated December 21, 1998. The original filing was not noticed in the **Federal Register**.

Rule 437

Participation in Year 2000 Testing

Rule 437. Each member not associated with a member organization, and each member organization shall participate in industry testing of computer systems designed to prepare for Year 2000, in a manner and frequency as prescribed by the Exchange.

*Supplementary Material * * *
10 Members and member organizations that do not have or use computer systems in the conduct of their business, other than those supplied by the Exchange, are not subject to the requirements of this Rule.*

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 Exchange 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 and is set forth in Sections A, B, and C below.

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

1. Purpose

Rule 437 is intended to provide the Exchange with the ability to require certain members and member organizations to participate in industry testing of computer systems in preparation for the Year 2000 in such manner and frequency as prescribed by the Exchange.

Significant industry attention is being directed to proper systems preparation in order to avoid potential computer problems that may arise relating to the Year 2000. The primary concern is that computer systems may incorrectly read the date "01/01/00" as being the Year 1900 or another incorrect date.

The securities industry has cooperatively been addressing the potential "Year 2000 Problem" in stages which have included assessment of the problem, implementation of remedial measures, and internal testing. The next stage involves industry-wide testing of computer systems. Test participants are scheduled to include, among others, exchanges, registered clearing corporations and depositories, data processors, and broker-dealers.

Testing by and among a broad range of securities industry participants will be of critical importance to ensure that

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4(e)(2).

⁷ In reviewing this proposal, the Commission has considered it is potential impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

the markets continue to operate efficiently after January 1, 2000. To facilitate testing on an integrated, industry-wide basis, the Securities Industry Association ("SIA") has undertaken to coordinate these efforts. The first test is scheduled for March 6, 1999.

The testing encompassed by proposed Rule 437 may include the integrated industry-wide testing coordinated by SIA and such other testing as the Exchange deems necessary and appropriate. Excluded from the requirements of the rule are members and member organizations that do not use computers in the conduct of their business, other than those provided by the Exchange for order entry and similar purposes such as the Designated Order Turnaround (DOT) and other similar systems.

Background. The Exchange has been conducting an "awareness" program since mid-1997. NYSE Information Memorandum 97-30, dated May 22, 1997, required completion of a survey by all members and member organizations to help the Exchange assess the membership's approach and progress in addressing the Year 2000 ("Y2K") problem.

Subsequently, the Exchange implemented a program of quarterly contacts of members and member organizations by our surveillance coordinators to monitor each organization's progress in meeting its milestones for achieving Y2K readiness. In addition, the Exchange's financial/operations examination scope requires examiners to discuss with key personnel and document as part of the examination each firm's milestones.

NYSE Testing. The Exchange will require all members and member organizations with a direct line to the NYSE, *i.e.*, through the Online Comparison System ("OCS") and the Common Message Switch ("CMS") to conduct point-to-point tests⁴ and extended point-to-point tests⁵ with the NYSE. The types of member organizations with such direct lines include clearing firms, *i.e.*, those that self-clear and those that clear for correspondent firms. Also, Specialist, whether self-clearing or not, must participate in point-to-point testing with the Exchange. The term "Specialist" for testing purposes means an organization, not a natural person. Introducing organizations having no direct lines to

the Exchange will not be required to test with the Exchange. Rather, it is expected that clearing organizations will test with their respective introducing organizations. The Exchange will monitor this effort and the Exchange may require additional testing if necessary.

SIA Testing. The NYSE expects that its member clearing firms will participate in the SIA-coordinated testing, scheduled for March 6, 1999. While the Exchange anticipates that all clearing firms will participate, the SIA may determine that a particular firm is "not ready" or there may not be sufficient capacity for all clearing firms to participate. Should this happen, the Exchange will track alternative testing engaged in by such member organization.

Currently, the Exchange has one hundred forty-four (144) clearing/carrying member organizations and one hundred forty-six (146) introducing organizations that deal with the public, as well as thirty-two (32) specialist organizations. There are also ten (10) registered competitive market makers ("RCMMs") and one hundred ninety-five (195) independent brokers ("S2 brokers") who use NYSE systems which will be tested by the Exchange. RCMMs and S2 brokers will not be required to test with the NYSE as they do not have their own electronic links to the Exchange.

Exemptive Authority. The Exchange does not believe it necessary to amend the proposed rule to provide the Exchange with authority to exempt certain types of members or member organizations from testing. This authority currently exists within the proposed rule which provides the Exchange with the flexibility to prescribe the manner and frequency of testing for members and member organizations.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)⁶ that an Exchange have rules that are designated to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and to 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 proposed rule change is designed to authorize the

Exchange to require its members and member organizations to participate in industry-wide testing of computer systems in preparation for the Year 2000 in a manner and frequency prescribed by the Exchange.

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 the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission has concluded, for the reasons set forth below, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. Mandating Year 2000 testing and reporting is consistent with Section 6(b)(5) of the Act, which, among other aspects, requires that the rules of an exchange promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system. The Commission believes that the proposed rule change will facilitate the NYSE's and member firms' efforts to ensure the securities markets' continued smooth operation during the period leading up to and beyond January 1, 2000.

The Exchange has requested that the Commission approve the proposed rule change prior to the 30th day after the date of publication of notice of the filing in the **Federal Register** to ensure that members and member firms participate in all required systems testing on a timely basis, in anticipation of industry-wide testing that begins on March 6, 1999. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of the filing in the **Federal Register**. It is vital that SROs such as the NYSE have the authority to mandate that their member firms participate in Year 2000 testing and that

⁴ A point-to-point test verifies that a firm has the ability to receive data from the Exchange, process that data and send the data output to the Exchange.

⁵ An extended point-to-point test allows a firm to execute multiple point-to-point tests in one day.

⁶ 15 U.S.C. 78f(b)(5).

they report test results (and other Year 2000 information) to the SROs. The proposed rule change will help the NYSE participate in coordinating Year 2000 testing, including industry-wide testing, and in remediating any potential Year 2000 problems. This, in turn, will help ensure that the industry-wide tests and the NYSE's Year 2000 efforts are successful. The proposed rule change will also help the NYSE work with its member firms, the SIA, and other SROs to minimize any possible disruptions the Year 2000 may cause.

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, N.W., Washington, D.C. 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 in the Commission's Public Reference Room in 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 28, 1999.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act⁷ that the proposed rule change (SR-NYSE-98-29) and Amendment No. 1 thereto is hereby on an accelerated basis.⁸

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40863; File No. SR-PCX-98-52]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to Rule 2.6(e) on the Prevention of the Misuse of Material, Nonpublic Information

December 30, 1998.

I. Introduction

On October 5, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend PCX Rule 2.6(e) which relates to guidelines established for the prevention of the misuse of material, nonpublic information by members and member organizations. On November 3, 1998, the PCX filed an amendment to the proposed rule change.³ The Commission published the proposed rule change, as amended, for comment in the **Federal Register** on November 27, 1998.⁴ No comments were received. This order approves the proposal, as amended.

II. Description of the Proposal

In 1993, the Commission approved a PCX proposal to adopt Rule 2.6(e) relating to the establishment, maintenance and enforcement of procedures designed to prevent the misuse of material, nonpublic information under the Insider Trading and Securities Fraud Enforcement Act of 1988 ("ITSFEA").⁵ The Exchange is proposing to amend the rule in several respects.

First, the rule currently states: "Members that are required, pursuant to Rule 2.6, to file SEC Form X-17A-5 with the Exchange on an annual basis shall file contemporaneously with those submissions attestations signed by such members stating that the procedures mandated by this Rule have been established, enforced and maintained." The proposed rule change would state

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Robert Pacileo, Jr., Staff Attorney, PCX, to Kathy England, Assistant Director, Division of Market Regulation, Commission, dated October 29, 1998.

⁴ Securities Exchange Act Release No. 40686 (November 18, 1998), 63 FR 65626.

⁵ See Securities Exchange Act Release No. 33171 (November 9, 1993), 58 FR 60892 (November 18, 1993).

that only those organizations for which the exchange is the Designated Examining Authority are required to file ITSFEA compliance acknowledgments stating that the procedures mandated by this rule have been established, enforced and maintained.⁶

The rule currently defines associated person as "any partner, officer, director or branch manager of a member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by or under common control with a member, or any employee of a member." The Exchange is proposing to change the definition to "anyone who directly is engaged in the member or member organization's trading-related activities, including general partners, officers, directors, managers (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by or under common control with a member, or any employee of the member or member organization." The rule change would exclude limited partners from this definition, unless the limited partners are directly involved in the member organization's trading-related activities.

The Exchange further proposes to define "employee" as "every person who is compensated directly or indirectly by the member or member organization for the solicitation or handling of business in securities, including individuals trading securities for the account of the member or member organization, whether such securities are dealt in on the exchange or dealt over-the-counter."⁷ Thus, independent contractors⁸ as well as actual employees will be subject to the requirements of the rule.

The Exchange proposes to delete superfluous language regarding record keeping in Commentary .03 of Rule 2.6(e). Finally, the Exchange proposes to clarify that an Exchange member who is a lessor of a membership, and is not registered and not required to register as a broker-dealer under Section 15 of the

⁶ The Exchange notes that this rule change is a codification of the existing practices of the Exchange.

⁷ The Commission approved a similar definition that the Philadelphia Stock Exchange proposed in 1997. See Securities Exchange Act Release No. 39178 (October 1, 1997), 62 FR 52804 (October 9, 1997.)

⁸ See, e.g., Letter from Douglas Scarff, Director, Division of Market Regulation, SEC to Gordon S. Macklin, President, National Association of Securities Dealers, Inc., dated June 18, 1982 (clarifying the status of independent contractors under the Act).

⁷ 15 U.S.C. 78s(b)(2).

⁸ In approving the proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁹ 17 CFR 200.30-3(a)(12).