

publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such 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, N.W., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR-NASD-99-26 and should be submitted by June 1, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42757; File No. SR-NYSE-99-44]

### Self-Regulatory Organizations; New York Stock Exchange, Inc; Order Approving Proposed Rule Change Relating to NYSE Rule 103A

May 4, 2000.

#### I. Introduction

On November 3, 1999, the New York Stock Exchange, Inc ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission "SEC" or "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 relating to NYSE Rule 103A. The proposed rule change was published for comment in the **Federal Register** on March 14, 2000.<sup>3</sup> The Commission did not receive any comment letters with respect to the proposal. This order approves the Exchange's proposal.

#### II. Description of the Proposal

##### 1. Purpose

The Exchange proposed to amend Rule 103A (Special Stock Reallocation) to codify the Market Performance Committee's ("MPC") authority with respect to allocation freezes, stock assignments and reassignments, specialist unit organizational changes, and Floor member qualification and continuing education requirements.

##### a. Allocation Freezes

Currently, Rule 103A provides the MPC the authority to establish and administer measures of specialist performance, conduct performance improvement actions when a specialist unit does not meet the performance standards in Rule 103A, and reallocate stocks if a unit does not achieve its specified goals when subject to a performance improvement action. The Exchange represented that these standards help to establish and maintain acceptable levels of specialist performance, thereby enhancing the competitiveness of the Exchange's specialist system. The purpose of a performance improvement action is to provide assistance and guidance to specialist units to enable them to enhance their performance. When a performance improvement action is initiated, a specialist unit is required to submit a performance improvement plan addressing how it intends to improve performance to the MPC. Based on the MPC's review of the performance improvement plan, the MPC has the authority to preclude a specialist unit, that is subject to a performance improvement action, from applying to be allocated any newly-listing company (an "allocation freeze") if the MPC believes such action is appropriate.

The Exchange proposed to amend Rule 103A to allow the MPC to exercise its discretion in imposing allocation freezes. In certain instances, the Committee will determine that a unit's performance is not as strong as other units' performance, although the unit's

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

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

<sup>3</sup> Securities Exchange Act Release No. 34-42501 (March 7, 2000), 65 FR 13801.

performance fully meets the Rule 103A performance standards. For example, this may occur when a specialist unit's scores on the quarterly Specialist Performance Evaluation Questionnaire are above Rule 103A performance standards, however, the unit may have lower scores than other units over a period of several quarters, resulting in persistent lower rankings in the bottom quartile. In these instances, the Exchange believes the MPC should be able to use its professional judgment to provide incentives to specialist units to encourage them to enhance their performance. Therefore, the Exchange proposes to add to Rule 103A authority for the Committee to initiate an allocation freeze for a unit, without initiating a formal performance improvement action. The Commission expects the NYSE's MPC to exercise its discretion consistent with the purpose of the Act.

##### b. Receipt of New Listings During an Allocation Freeze

Under the Exchange's Allocation Policy and Procedures (the "Allocation Policy") the are circumstances when a newly-listing company may choose its specialist unit. For example, a newly-listing company that is related to an already listed company many choose to stay with the current specialist for the listed company or choose to go through the Allocation Committee.<sup>4</sup> The newly-listing company may choose to stay with the current specialist for the related listed company even if such unit it is under an allocation freeze imposed by the MPC as long as the unit is not subject to a performance improvement action.

Similarly, under the Allocation Policy, the newly-listing company may choose its specialist from among a group of specialist units chosen by the Allocation Committee. The Allocation Committee has the ability to exclude or include the current specialist for the related company in such a group. If the specialist unit was under an allocation freeze imposed by the MPC, it would not be precluded from being placed in the group or chosen by the newly-listing company as long as the allocation freeze was not the result of a performance improvement action.

##### c. Floor Member Qualification and Continuing Education

The Exchange also proposes to amend Rule 103A to make mandatory (i) participation by proposed Floor members in an Exchange-sponsored

<sup>4</sup> See Securities Exchange Act Release No. 42487 (March 2, 2000), 65 FR 13801 (March 9, 2000).

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

education program before such individuals would be permitted to act as members on the Floor; and (ii) participation by all Floor members in an Exchange-sponsored educational program, conducted semi-annually, and at such other times as may be appropriate in connection with any particular matter or matters. Rule 103A would also make it mandatory for Floor members to participate in any testing programs the Exchange may introduce from time to time in connection with the mandatory education program.

#### d. Stock Assignments and Reassignments and Organizational Changes of Specialist Units

The Exchange proposes to amend rule 103A to codify the Committee's authority with respect to approving stock assignments and reassignments, assignments in special stock situations, and organizational changes to specialist units. Such situations typically involve (i) changes in a specialist unit's organizational structure effecting control of the specialist unit, such as split-ups and mergers; (ii) withdrawal of individual specialists from one specialist unit, where the specialists propose to register with another unit and transfer certain securities to such other unit; and (iii) assignments of newly-listed securities to a specialist unit already registered in a security with a trading relationship to the newly-listed securities (e.g., a corporate restructuring of a listed company; stocks involved in mergers of listed companies; and immediate relisting of a listed company that delisted for technical reasons). In all of these situations, the MPC will review the proposal, and approve the matter if the Committee believes that market quality in the securities subject to the proposal will not be eroded.

### III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6 of the Act<sup>5</sup> and the rules and regulations thereunder applicable to a national security exchange.<sup>6</sup> In particular, the Commission finds the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>7</sup> which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to remote

impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

Specialists play a crucial role in providing stability, continuity, and liquidity to the trading of securities. Specialists are obligated by the NYSE and the Act and rules thereunder,<sup>8</sup> to maintain fair and orderly markets in designated securities. The Commission supports effective NYSE oversight of the specialist's activities and performance, including comparing a specialist's score on the quarterly Specialist Evaluation Questionnaire with other specialist's scores in an effort to provide an incentive to increase specialist performance. The Commission believes that giving the MPC the discretion to impose an allocation freeze should provide the Exchange with the means to identify and correct poor specialist performance and to ascertain whether specialists are maintaining fair and orderly markets in their assigned securities.

Furthermore, the proposed floor member qualification and continuing education requirements are a result of NYSE's undertakings.<sup>9</sup> The NYSE pledged to design and implement a mandatory, regular education program for Floor members that would address Floor members' obligations and prohibitions under the federal securities laws and NYSE rules.<sup>10</sup> The Commission believes that NYSE's proposal to require Floor members to participate in an education program prior to being permitted to act as members is appropriate and consistent with this undertaking. Also, the semi-annual, or more frequent as the NYSE deems appropriate, educational programs for all Floor members satisfies the NYSE's undertaking to provide regular, mandatory education programs. The Exchange also proposed mandatory testing programs that should ensure that Floor members are aware of Floor members' obligations and prohibitions under the federal securities laws and NYSE rules.

As a result, because the proposed amendment of NYSE Rule 103A promotes increased specialist performance and creates mandatory and regular training for all floor members, the Commission believes that NYSE's proposed amendment to Rule 103A is consistent with the provisions of the Act discussed above.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-NYSE-99-42), including amendments Nos. 1 and 2, is approved.

By the Commission, for the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 00-11803 Filed 5-10-00; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42756; File No. SR-PCX-99-10]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 4 and 5 to the Proposed Rule Change by the Pacific Exchange, Inc. Amending Its Disciplinary Procedures

May 4, 2000.

#### I. Introduction

On April 2, 1999, the Pacific Exchange, Inc. ("PCX" 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 proposed rule change to amend its disciplinary procedures. On June 25, 1999, January 18, 2000, and January 19, 2000, respectively, the PCX filed Amendment Nos. 1, 2 and 3 to the proposed rule change.<sup>3</sup> The proposed rule change including Amendments Nos. 1, 2 and 3 were published for comment in the **Federal Register** on February 10, 2000.<sup>4</sup> On April 21, 2000, the PCX filed Amendment No. 4 to the proposal.<sup>5</sup> On April 28, 2000, the PCX

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</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 Letters from Michael D. Pierson, Director, Regulatory Policy, PCX, to Michael A. Walinskas, Associate Director, Division of Market Regulation ("Division"), SEC, dated June 24, 1999 ("Amendment No. 1") from Michael D. Pierson to Jennifer Colihan, Attorney, Division, SEC, dated January 7, 2000 ("Amendment No. 2"); from Michael D. Pierson to Kelly Riley, Attorney, Division, SEC, dated January 14, 2000 ("Amendment No. 3").

<sup>4</sup> See Exchange Act Release No. 42384 (February 3, 2000), 65 FR 6675.

<sup>5</sup> See Letter from Robert Pacileo, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Senior Special Counsel, Division, SEC, dated April 20,

Continued

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

<sup>6</sup> In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> See 17 CFR 240.11b-1; NYSE Rule 104.

<sup>9</sup> See Securities Exchange Act Release No. 41574, 70 S.E.C. Docket 106 (June 29, 1999).

<sup>10</sup> See *id.* at 9.