

current margin and risk-based haircut methodologies serve to limit the size of positions that a CBOE member or its customer may maintain.<sup>14</sup> The CBOE also has the authority under its rules to impose a higher margin requirement upon the member or member organization when it determines that a higher requirement is warranted.<sup>15</sup> Monitoring accounts maintaining large positions should provide the Exchange with information necessary to determine whether to impose additional margin and/or whether to assess capital charges upon a member organization carrying the account. In addition, the Commission's net capital rule, Rule 15c3-1 under the Exchange Act, imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement. The Commission also notes that the Options Clearing Corporation will serve as the counterparty guarantor in every exchange-traded transaction.

Sixth, the Commission notes that the index options and other types of index-based derivatives (e.g., forwards and swaps) are not subject to position and exercise limits in the OTC market. The Commission believes that increasing position and exercise limits for narrow-based index options will better allow the Exchange to compete with the OTC market.

Finally, the absence of any discernible manipulative problems for narrow-based index options at existing levels leads the Commission to conclude that the proposed increases are reasonable and that they can be safely implemented.<sup>16</sup> The Commission believes that the Exchange's surveillance programs are adequate to detect and deter violations of position and exercise limits, as well as to detect

<sup>14</sup> In particular, Exchange Act Rule 15c3-1 requires a capital charge equal to the maximum potential loss on a broker-dealer's aggregate index position over a +(-) 10% market move. In addition, the adoption of risk-based haircuts in 1997 resulted in significant increases in capital charges for unhedged options positions. See Securities Exchange Act Release No. 38248 (February 6, 1997), 62 FR 6474 (February 12, 1997) (adopting risk-based haircuts). With regard to margin requirements, CBOE Rule 12.3 provides a customer margin requirement for an unhedged position in a listed narrow-based index option equal to the option premium plus 20% of the product of the current index group value and the applicable index multiplier, reduced by any out-of-the-money account, with a minimum margin requirement equal to the option premium plus 10% of the product of the current index group value and the applicable index multiplier.

<sup>15</sup> See CBOE Rule 12.10.

<sup>16</sup> Telephone Conversation between Mary L. Bender, Senior Vice President and Chief Regulatory Officer, Division of Regulatory Services, CBOE, and Joseph Corcoran, Division, Commission, on June 27, 2000.

and deter attempted manipulation and other trading abuses through the use of such illegal positions by market participants.<sup>17</sup>

The Commission finds good cause to approve the proposed rule change and Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. As discussed above, the proposed rule change, as amended, is identical to proposals by the Phlx and Amex that the Commission previously approved.<sup>18</sup> The Commission notes that no comments were received on either the Phlx's or Amex's proposal. In addition, the Commission is not aware of any problems arising from the position and exercise limits approved in the Phlx and Amex proposals. Amendment No. 1 conforms CBOE's position and exercise limits for narrow-based index options to the levels adopted by the Phlx and Amex. Accordingly, the Commission finds that, consistent with Sections 6(b) and 19(b)(2) of the Act, there is good cause to approve the proposal and Amendment No. 1 to the proposal on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-CBOE-00-16), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**Jonathan G. Katz,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43044; International Series Release No. 1228; File No. SR-NYSE-00-25]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc., Relating to the Trading of the Ordinary Shares of Celanese AG

July 17, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,

<sup>17</sup> The Commission emphasizes that the Exchange must closely monitor compliance with position and exercise limits and impose appropriate sanctions for failures to comply with the Exchange's position and exercise limit rules.

<sup>18</sup> See Narrow-Based Index Option Order, *supra* note 5.

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 14, 2000, the New York Stock Exchange, Inc. (the "Exchange" or the "NYSE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, 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 on an accelerated basis.

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

The Exchange is proposing to adopt two interpretations under its rules to accommodate the trading of Celanese AG ("Celanese"). Celanese listed on the NYSE on October 25, 1999.

Celanese is a stock corporation incorporated under the laws of the Federal Republic of Germany with a single class of common stock—ordinary shares, no par value ("Ordinary Shares")—that trade on both the NYSE and the Frankfurt Stock Exchange, as well as on other exchanges around the world. The register for the Ordinary Shares is administered by Deutsche Bank AG, Celanese's transfer agent and registrar in Germany, and ChaseMellon Shareholder Services, Celanese's transfer agent and registrar in the United States. Transactions in the Ordinary Shares are cleared through the central clearing systems of both countries, The Depository Trust and Clearing Corporation ("DTCC"), in the United States and Deutsche Borse Clearing in Germany.

Although the Celanese Ordinary Shares are issued by a German company, they have many characteristics that are similar to shares of common stock issued by U.S. companies. For example, while most German stocks are in bearer form, Celanese shares are in registered form, the same as U.S. shares. However, the form of the stock certificate will have certain characteristics more similar to certificated shares of common stock of a German company than of a U.S. company. In addition, Celanese will pay dividends and call stockholder meetings and conduct voting at such meetings generally in accordance with German practices. For these reasons, the Exchange proposes to adopt two interpretations of its rules to accommodate the listing and trading of Celanese, similar to interpretations that the Commission approved in 1998 to

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

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

accommodate the listing and trading of DaimlerChrysler<sup>3</sup>:

*Certificates:* The Frankfurt Stock Exchange rules governing stock certificates are somewhat different than the Exchange's rules. This rule change interprets Paragraph 502 of the Exchange's Listed Company Manual (the "Manual") to accept the Celanese certificates.

*Proxies:* Celanese will solicit proxies in a manner that combines characteristics of both the German and U.S. markets. This rule change interprets Paragraphs 401.03 and 402 of the Manual to accept Celanese's proposed proxy procedures.

## 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 III below. The Exchange 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 purpose of the proposed rule change is to provide two interpretations under the Exchange's rules to accommodate the listing and trading of Celanese. These interpretations pertain to Celanese's share certificates and voting procedures. As noted above, they are similar to interpretations that the Commission approved in 1998 with respect to the listing of the ordinary shares of DaimlerChrysler.<sup>4</sup>

#### Certificates

The Celanese share certificates conform in most respects to the requirements in Paragraph 502 of the Manual. The only exceptions are that the vignettes (pictures) are not fully

<sup>3</sup> See Securities Exchange Act Release No. 40597 (October 23, 1998), 63 FR 58435 (October 30, 1998).

<sup>4</sup> The Exchange anticipates developing and filing with the Commission such generally applicable rules as are necessary to cover matters relating to the trading of ordinary shares of non-U.S. companies, thus making company specific rule filings such as this one unnecessary. Since Celanese listed before the development work could be finalized, the Exchange is requesting this company-specific approval, following the DaimlerChrysler model.

steel engraved and the form of endorsement provides for German registry. Otherwise, the printing and engraving requirements are met. The Exchange believes that these are relatively minor inconsistencies with current requirements.

#### Voting

Under German law, only stockholders who hold shares on the date of the stockholders meeting are entitled to vote. Accordingly, the record date for voting at a stockholder meeting is the meeting date. In contrast, Exchange rules require 10 days' notice of a record date and 30 days between record and meeting date. Celanese will modify its current practice to accommodate the notice period in the United States. In Germany, there already are procedures to distribute preliminary agendas and other information to shareholders approximately one month before the meeting. Celanese has agreed to prepare and mail stockholder meeting materials approximately 45 days prior to its meeting, permitting the solicitation of proxies in the United States in the currently accepted time frame. The company also has agreed to give the Exchange 10 days' notice of the record date.

The coincidence of the record and meeting date also raises the possibility that a selling shareholder could give a proxy and then sell the shares, with the buyer also getting a proxy. This could lead to double voting. In order to address this, both ChaseMellon Shareholder Services as transfer agent (the "Transfer Agent") and Automatic Data Processing ("ADP"), the proxy agent for most member organizations, will institute procedures to monitor changes in the shareholder list between the date the proxy material is originally mailed out and the date of the meeting. These procedures will be designed (i) To cancel the votes of persons who submit proxies but sell their shares prior to the meeting date, and (ii) to facilitate voting by persons who purchase shares after the time the proxy material is mailed out, but before the meeting date. A purpose of the proposed rule change is to accept these procedures as being in compliance with NYSE procedures.

Both the Transfer Agent and ADP will produce shareholder lists on the day designated for mailing the proxy material (approximately 30–45 days prior to the meeting). The Transfer Agent's list will reflect the names of registered holders and ADP's list will reflect the names of beneficial owners. Prior to the meeting date, the Transfer Agent and ADP will each produce a current shareholder list. If holders no

longer appear on the list, then votes attributed to proxies submitted by them will be cancelled. If new holders appear, proxy materials will be mailed to them by the Transfer Agent, in the case of registered owners, and by ADP, in the case of beneficial owners.

The shareholder lists can be updated periodically up until the date of the meeting. If practicable, proxy materials will be mailed to any new holders. This will be done on a best efforts basis. Such best efforts may include electronic notification and expedited delivery service. The proxy materials will describe voting procedures in detail. Notices will be included advising of the automatic revocation of the proxy if the holder sells stocks prior to the meeting. Finally, as a check and balance, the total vote cast in nominee name will not be permitted to exceed the total position so held.

In addition, Celanese shareholders can vote in person at a shareholders' meeting. Under German law, a shareholder must give the company notice of his or her intent to vote in person no later than three business days prior to the meeting, and the person must be a record holder on the meeting date.<sup>5</sup>

#### 2. Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act,<sup>6</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

<sup>5</sup> With respect to dividends, Celanese's record date also will be the date of the company's annual meeting (like most German companies, Celanese pays dividends annually). This will make it impossible to trade the stock "ex-dividend" on the Exchange in the normal course. Accordingly, the Exchange will use its existing flexibility under Exchange Rules 235 and 257 and Paragraph 703.02 of the Manual to trade Celanese stock with "due bills" for the period that the stock normally would trade ex-dividend. This is a process pursuant to which the seller will receive the dividend, but is obligated to pay the dividend to the buyer of the shares. This process will be transparent to investors since due bills net out in the clearing process. To avoid any potential confusion as to the "ex-dividend date", the Exchange will endeavor to transmit notices to member organizations well in advance of the dividend declaration date.

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

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange 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, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

### III. 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 20549-0609. 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-00-25 and should be submitted by [insert date 21 days from the date of this publication].

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

The Commission finds that the NYSE's proposal to interpret the Manual to accommodate the listing and trading of Celanese shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> Specifically, the Commission finds that the proposed

rule change is consistent with Section 6(b)(5) of the Act in that it will remove impediments to and perfect the mechanism of a free and open market, and will protect investors and the public interest, by enabling the NYSE to serve as a market for shares of Celanese (rather than American depository receipts) while maintaining trading standards that are substantially equivalent to the NYSE's existing standards.

The Commission believes that it is reasonable for the NYSE to interpret the Manual to accept the Celanese proxy procedures. By mailing stockholder meeting materials approximately 45 days prior to its annual meeting, Celanese will give shareholders the same type of advance notification provided for in the Manual. Moreover, the Celanese proxy procedures will cancel proxies for shares sold prior to the meeting, and will facilitate voting by persons who purchase shares during the month leading up to the meeting. In that way, the Exchange's proxy procedures regarding Celanese appear to be substantially equivalent to the NYSE's existing standards, by permitting the votes cast at the annual meeting to accurately reflect the company's shareholders at the time of the meeting. Indeed, the Commission, approved a similar interpretation in 1998 to permit the NYSE to trade ordinary shares of DaimlerChrysler,<sup>8</sup> and the Commission approved a similar interpretation earlier this year to permit the NYSE to trade ordinary shares of UBS.<sup>9</sup>

The Commission notes that the Exchange states that it anticipates developing and filing generally applicable rules related to the trading of ordinary shares of non-U.S. companies, making this type of company-specific rule filing unnecessary. The Commission supports that goal, and concurs that general rules are preferable to a series of company-specific exemptions.

The Exchange has requested that the Commission approve the proposed rule change prior to the thirtieth day after its publication in the **Federal Register**. The Exchange notes that these interpretations are the same as those made in connection with the trading of ordinary shares of DaimlerChrysler, and the Exchange states that DaimlerChrysler shares have traded without difficulty on the Exchange since their first listing. The Exchange adds that in light of the significant trading interest in Celanese, these

interpretations will help eliminate uncertainty on the part of market participants.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. These interpretations are substantially similar to the interpretations that permitted the trading of DaimlerChrysler, and the Commission finds that granting accelerated approval to these changes will eliminate uncertainty about the status of Celanese shares.<sup>10</sup>

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act<sup>11</sup> that the proposed rule change (SR-NYSE-00-25) is hereby approved on an accelerated basis.

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

**Jonathan G. Katz,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43049; File No. SR-PCX-00-05]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Its Automatic Execution System

July 18, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 8, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On June 27, 2000, PCX submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The

<sup>10</sup> The Commission notes, however, that the Exchange has been trading ordinary shares of Celanese since October 1999, but did not file this proposed rule change until June 2000. The Commission's approval of this proposed rule change is not retroactive.

<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 letter from Michael Pierson, Vice President, Regulatory Policy, PCX, to Gordon Fuller, Special Counsel, Division of Market Regulation, Commission, dated June 26, 2000 ("Amendment No. 1"). In Amendment No. 1, PCX revised some of the text of the proposed rule and submitted this revised text.

<sup>7</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>8</sup> See note 3, *supra*.

<sup>9</sup> See Securities Exchange Act Release No. 42785 (May 15, 2000), 65 FR 33396 (May 23, 2000).