

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-43163; File No. SR-NYSE-00-16)

Self Regulatory Organization; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the New York Stock Exchange, Inc., To Amend Paragraph 902.02 of the Exchange's Listed Company Manual Regarding Total Listing Fees Charged Per Issuer

August 16, 2000.

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 April 25, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Item I and II below, which Items have been prepared by the Exchange. On July 17, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal and Amendment No. 1 on an accelerated basis, as a pilot program through December 31, 2002.⁴

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

The Exchange proposes to amend Paragraph 902.02 of the Exchange's Listed Company Manual by implementing a \$1 million fee cap per issuer in any given calendar year. Below

is the text of the proposed rule change. New language is *italicized*.

* * * * *

902.02 Schedule of Current Listing Fees (in effect Jan. 1, 1989)

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It is suggested that the calculation of the fees be checked in advance with the Exchange where there is any question as to the amount of the fee payable. All fees will be calculated to the nearest dollar.

There is a \$1 million cap on listing fees per issuer in any given calendar year. This fee cap includes and encompasses all classes of securities except derivatives issued by listed companies as part of their capital structure. This cap will not apply to closed-end funds. The cap is in effect on a pilot basis for 3 years through 2002.

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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 NYSE 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 NYSE proposes to amend its listed company fee schedule to implement a \$1 million fee cap per issuer in any given calendar year. The fee cap would include all classes of securities except derivatives issued by listed companies as part of their capital structure. In addition, the fee cap would not apply to closed-end funds. The fee cap would be in effect on a pilot basis through December 31, 2002.

The Exchange notes that it has a variety of listing fees that are or can be applicable to an issuer in a particular year. In the year of initial listing, the company pays an initial listing fee and a pro rata continuing fee as well. In any typical subsequent year, the company will pay a continuing listing fee, but might also pay additional fees for supplemental listing if, for example, the company issues additional shares of its listed stock or creates and issues an

additional class of stock. The Exchange represents that, depending on a company's number of shares outstanding and its additional listing activity in any particular year, listing fees can become substantial for an individual company. The Exchange therefore believes that the proposed rule change, which would be instituted on a pilot basis, is an appropriate response to the views of its listed companies.⁵

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(4)⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

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

The Exchange did not receive any written comments on the proposed rule change.

III. 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, 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at

⁵ See Amendment No. 1, *supra* note 3.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 13, 2000 ("Amendment No. 1"). In response to comments from Commission staff, the Exchange submitted Amendment No. 1 to clarify the purpose and application of the proposed rule change.

⁴ Telephone conversation between Daniel Odell, Assistant Secretary, NYSE, and Susie Cho, Attorney, Division, Commission, on August 15, 2000.

the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-00-16 and should be submitted by September 13, 2000.

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

The Commission has reviewed the NYSE's proposed rule change and finds, for the reasons set forth below, that the proposal, as amended, is consistent with the requirements of Section 6 of the Act⁸ and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with Section 6(b)(4) of the Act,⁹ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.¹⁰

The Commission finds that the NYSE's proposed fee cap is a reasonable one that will be applicable to all its issuers. Further, the fee cap will be instituted on a pilot basis, which will permit the Exchange to evaluate its impact on issuers. The Commission further finds good cause for approving the proposed rule change (SR-NYSE-00-16) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Exchange requested that the Commission accelerate the effective date of the proposed rule change so that the Exchange could institute the fee cap as quickly as possible, to the benefit of its listed companies. The Commission agrees that approval of this request would enable these issuers to promptly take advantage of the change in fee structure. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b) of the act,¹¹ to approve the proposal, as amended, on an accelerated basis.

V. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-NYSE-00-16), as amended, is hereby approved on an accelerated basis, as a pilot program effective through December 31, 2002.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5) and 78s(b).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43167; File No. SR-ODD-00-03]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval to Proposed Supplement to Options Disclosure Document Regarding Risks of Options Positions

August 17, 2000.

On June 26, 2000, the Options Clearing Corporation ("OCC") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Rule 9b-1 under the Securities Exchange Act of 1934 ("Act"),¹ five definitive copies of a Supplement to its options disclosure document ("ODD"), which describes, among other things, the principal risks of options positions. In particular, the Supplement amends certain parts of Chapter 10 that describe the effect of unusual circumstances on the settlement procedures for standardized options.²

The ODD currently contains general disclosures on the characteristics and risks of trading standardized options. The Commission has approved OCC rule proposals that change or clarify the settlement procedures for options positions in unusual circumstances, such as when a primary market for component securities of an index option is not open on the last trading day before expiration.³ The proposed Supplement incorporates descriptions of these changes or clarifications into the ODD.

The Commission has reviewed the ODD Supplement and finds that it complies with Rule 9b-1 under the Act.⁴ The Supplement is intended to be read in conjunction with the ODD, which discusses the characteristics and

¹ 17 CFR 240.9b-1.

² See Letter from James C. Yong, First Vice President and Deputy General Counsel, OCC, to Elizabeth King, Associate Director, Division of Market Regulation, Commission, dated June 26, 2000.

³ See Securities Exchange Act Release No. 42769 (May 9, 2000), 65 FR 31036 (May 15, 2000) (order approving SR-OCC-00-01); Securities Exchange Act Release No. 42769 (June 1, 2000), 65 FR 36489 (June 8, 2000) (order approving SR-OCC-99-16).

⁴ 17 CFR 240.9b-1.

risks of options generally. The ODD, along with the Supplement, provides information regarding the principal risks of options positions, including the effect of unusual circumstances on the settlement procedures for standardized options. Rule 9b-1 provides that an options market must file five preliminary copies of an amended ODD with the Commission at least 30 days prior to the date definitive copies of the ODD are furnished to customers, unless the Commission determines otherwise, having due regard for the adequacy of information disclosed and the protection of investors.⁵ The Commission has reviewed the Supplement, and finds that it is consistent with the protection of investors and in the public interest to allow the distribution of the Supplement as of the date of this order.

It Is Therefore Ordered, pursuant to Rule 9b-1 under the Act,⁶ that the proposed Supplement regarding special settlement procedures (SR-ODD-00-03) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43150; File No. SR-PCX-00-20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Auto-Ex Log-On Requirements

August 14, 2000.

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 July 10, 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 PCX. The Commission is publishing this notice to solicit

⁵ This provision is intended to permit the Commission either to accelerate or extend the time period in which definitive copies of a disclosure document may be distributed to the public.

⁶ 17 CFR 240.9b-1.

⁷ 17 CFR 200.30-3(a)(39).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.