Section 1202, the Exchange will notify applicants of a decision to deny a application, citing the specific quantitative or qualitative standards in Part 1 of the Amex Company Guide that were not met. The Exchange will notify the applicant that, upon request, the applicant will be provided an opportunity for a hearing under these procedures. An applicant may request a written or oral hearing within 7 days of the date of the Staff's determination to deny the application.[5] Section 1203 specifies written materials that the applicant may submit in connection with a hearing.

Section 1204 provides that all hearings will be conducted before a subcommittee of the Committee on Securities (''Subcommittee'') consisting of at least two persons. Following the hearing, the Subcommittee must issue a written decision (''Subcommittee Decision'') citing specific grounds for the Subcommittee's determination. The Subcommittee will promptly provide its decision to the applicant and will also provide notice that the applicant may request review by the Adjudicatory Council[6] within 15 days of the date of the Subcommittee Decision.[7] The applicant will also be notified that the Adjudicatory Council may call for review of the Subcommittee Decision within 45 days, at the request of one or more of the Council's members, as provided in Section 1205.

The Adjudicatory Council will consider the written record and can hold additional hearings. It may also recommend that the Amex Board consider the matter. The Adjudicatory Council will set forth specific grounds for its decision and provide notice that the Amex Board may call the decision for review at any time before its next meeting which is at least 15 days after the decision. If the Amex Board conducts a discretionary review, the applicant will be provided with a written decision affirming, modifying, reversing, or remanding the Adjudicatory Council's decision.[8] The Board's decision constitutes final action of the Exchange and will take immediate effect unless it specifies to the contrary.[9]

Section 1207 describes the documents included in the written record. Section 1208 provides for the maintenance of the written record of review, as well as any documents excluded from the written record.

Section 1211 prohibits the Amex Staff or an applicant from making any communication relevant to the merits of a proceeding with anyone who is participating in or advising in the consideration of a matter unless the applicant and the appropriate Amex Staff have been provided notice and an opportunity to participate in the communication. The Exchange currently expects that Amex Staff generally will waive their rights under this provisions in the interest of providing a non-adversarial business forum for listing decisions.[10]

III. Discussion

The Commission finds that the Exchange's proposal is consistent with the requirements of Section 6 of the Act,[11] and furthers the objectives of Section 6(b)(5)[12] in particular because it is 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, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change, by establishing procedures for the review of initial listing determinations, will provide clarity and transparency to issuers concerning the Amex's decisionmaking process. The new rules require the Exchange to notify applicants of a decision to deny listing and set forth the specific grounds for the determination at each level of review.

The proposed rules also provide a fair and independent review for issuers, with provisions detailing the maintenance of the record on review and prohibiting communications outside of the official proceeding. The Commission further notes that the proposed rules are modeled on the Nasdaq listing process.[13] Similar to the rules proposed herein, the rules of the National Association of Securities Dealers, Inc. codify the procedures for the review of initial listing determinations.[14]

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change, SR–Amex–00–12, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

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[5] The Amex will not charge a hearing fee to appeal the Exchange Staff's listing determination. Telephone conservation between Michael Cavalier, Associate General Counsel, Amex, and Susie Cho, Attorney, Division of Market Regulation (''Division''), Commission, April 19, 2000.

[6] The Amex Adjudicatory Council, is established by the Amex Board pursuant to Article II, Section 6 of the Amex Constitution. The Council consists of six individuals, all of whom are nominated by the Amex Nominating Committee and elected by the regular and options principal members voting together as a single class. Three of the Council's members are Floor Governors and three are Public Governors.

[7] The Amex will not charge a hearing fee to appeal the Subcommittee's determination. Telephone conservation between Michael Cavalier, Associate General Counsel, Amex, and Susie Cho, Attorney, Division, Commission, April 19, 2000.

[8] *See* Section 1206(c).

[9] The Commission notes that any applicant aggrieved by a final action of the Amex may apply for review to the Commission in accordance with Section 19 of the Act.

[10] Although members of the Amex Staff may waive their rights under Section 1211, the Commission expects that the record on review will include all of the information used as the basis for the Amex's decision.

[11] 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).

[12] 15 U.S.C. 78f(b)(5).

[13] *See* NASD 4800 Series Rules.

[14] Securities Exchange Act Release No. 41367 (May 13, 1999), 64 FR 25942.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43309; File No. SR–NYSE–00–37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Rescinding Parts of, or the Entire Text of, Exchange Rule 112A.10, Rule 321.25, Rule 392, Rule 393 and Rule 395, Which Reference Rescinded Exchange Rule 390 or Off-Board Trading Restrictions

September 20, 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 August 17, 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 Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 proposed rule change rescinds parts of, or the entire text of, the following Exchange rules that reference rescinded Exchange Rule 390, or off-Board trading restrictions: Rule 112A.10, Rule 321.25, Rule 392, Rule 393 and Rule 395.[3]

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. 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 this proposed rule change is to rescind parts of, or the entire text of, Exchange Rules that either reference rescinded Exchange Rule 390, or restrict off-Board transactions. Rule 390 was the Exchange's off-Board trading rule, which prohibited Exchange members and their affiliates from effecting transactions in exchange-listed securities away from a national securities exchange. The Commission approved the rescission of Exchange Rule 390 on May 5, 2000.[4] The proposed rule change also rescinds Exchange Rules that restrict off-Board transactions in general because the rescission of Rule 390 permits members to execute orders in Exchange-listed securities in any marketplace at any time.

The following Rules meet the criteria described above, and are therefore, proposed to be deleted, in whole or in part: Rule 112A.10 (Reports by Off-Floor Traders, Form 82–P); Rule 321.25 (Formation or Acquisition of Subsidiaries—Off-Board transactions); Rule 392 (Notification Requirements for Offerings of Listed Securities); Rule 393 (Secondary Distributions); and Rule 395 (Off-Floor Transactions in Listed Rights).

Rule 112A.10: Reports by Off-Floor Traders (Forms 82–P)

This rule requires members or member organizations to send a weekly report on Form 82–P covering off-Floor trading, upon the request of the Exchange. Since Rule 390 has been rescinded, this practice is no longer in effect and the report is no longer needed.

Rule 321.25: Formation or Acquisition of Subsidiaries—Off-Board Transactions

Section .25 of Rule 321 requires subsidiaries of members or member organizations to obtain Exchange permission before effecting a transaction in a listed stock off the Floor of the Exchange. Since Rule 390 has been rescinded, such permission would no longer be needed before effecting a transaction in a listed stock off the Floor of the Exchange.

Rule 392: Notification Requirements for Offerings of Listed Securities

The reference in this Rule to ''secondary distributions pursuant to Rule 393'' is no longer necessary as the Exchange proposes to rescind Rule 393 (see below).

Rule 393: Secondary Distributions

Rule 393 requires the prior approval of the Exchange for member organizations to participate in an ''over-the-counter'' or ''off-board'' secondary distribution of a security admitted to dealing on the Exchange. With the rescission of Rule 390, members may execute order/transactions in Exchange-listed securities in any marketplace at any time. Therefore, the Exchange proposes to rescind this Rule as it is an off-Board transaction restriction.

Rule 395: Off-Floor Transactions in Listed Rights

Rule 395 mandates that members, member organizations, and affiliated persons not effect any transaction in any subscription right admitted to dealing on the Exchange, in the over-the-counter market, either as principal or agent (subject to certain exceptions). The rescission of Rule 390 necessitates the rescission of this Rule because it is a restriction against off-Floor transactions; Exchange Rule 390 no longer restricts members, member organizations, and affiliated persons from trading as principal or agent in the over-the-counter market in a covered security.

2. Statutory Basis

The Exchange believes the basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[5] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The rescission of Rule 390 as well as these related Exchange Rules, and the Exchange's request that the Commission adopt an industry-wide customer price protection rule, serve to support free and open markets and the national market system.

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, Participates or Others

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

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

Within 35 days of the date of 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 20549–0609. Copies of

[3] For purposes of this notice, the terms ''off-Floor'' and ''off-Board'' are used interchangeably.

[4] Securities Exchange Act Release No. 42758 (May 5, 2000); 65 FR 30175 (May 10, 2000) (SR–NYSE–99–48).

[5] 15 U.S.C. 78f(b)(5).

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 4 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–00–37 and should be submitted by October 18, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–24736 Filed 9–26–00; 8:45 am]

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[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43312; File No. SR–PCX–00–12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Relating to Disciplinary Jurisdiction of the Ethics and Business Conduct Committee

September 20, 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 March 26, 2000, 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 the PCX. On September 12, 2000, the PCX filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Cindy L. Sink, Senior Attorney, Regulatory Policy, PCX, to Jennifer L. Colihan, Attorney, Division of Market Regulation, Commission, dated September 11, 2000. In Amendment No. 1, the Exchange deleted the word ''exclusive'' from Article IV, Section 9(a) of the PCX Constitution as the Exchange did not intend the jurisdiction described in that Section to be exclusive to the Ethics and Business Conduct Committee (''EBCC'' or ''Committee''). Also, the Exchange represented that the proposed rule change was approved by the PCX membership on January 27, 2000. Lastly, the Exchange provided an example of where a Floor Trading Committee (''FTC'') may act as the disciplinary committee in place of the EBCC.

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

The PCX proposes to broaden the jurisdiction of the EBCC to include the enforcement of rules and regulations relating to trading, order, decorum, health, safety, and welfare on the trading floors.

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 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. 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

Currently, Article IV, Section 9(b) of the PCX Constitution, regarding the jurisdiction of the EBCC, states that ''The jurisdiction of this Committee shall not extend to the enforcement of rules and regulations of the Floor Trading Committees relating to trading, order, decorum, health, safety, and welfare on the trading floors, or to hearings held by and sanctions imposed by such committees relating to such matters.'' The Exchange now proposes to expand the disciplinary jurisdiction of the EBCC to include the enforcement of rules and regulations relating to trading, order, decorum, health, safety, and welfare on the trading floors by deleting this provision from the PCX Constitution.

Currently, these rules and regulations are within the exclusive jurisdiction of the FTCs. It is intended that the EBCC will be used as the primary disciplinary committee at the Exchange and the FTCs will retain jurisdiction to hear disciplinary matters, if necessary. For example, it may be appropriate to take a case to an FTC rather than the EBCC if the case involves technical issues. In such a case, having the expertise of Floor Officials would be appropriate.[4]

The Exchange proposes this change to centralize disciplinary actions with one committee at the Exchange. The Exchange believes that having one disciplinary committee will better assure consistency in the decisions rendered. Moreover, the Exchange notes that, unlike the EBCC, the members of the FTCs are Floor Officials on the trading floors.

In that regard, the Exchange believes that in the process of adjudicating disciplinary cases that arise on the trading floor, it is less likely that the members of the EBCC will have personal knowledge of the relevant incident of a Floor Official ruling relating to the incident. Therefore, the Exchange believes that making the EBCC, in general, the sole disciplinary committee will result in a more objective disciplinary process at the PCX.

2. Basis

The Exchange believes the proposed rule change is consistent with section 6(b)[5] of the Act, in general, and furthers the objectives of section 6(b)(5),[6] in particular, in that it is designed to regulate communications to and from the Exchange's Options Trading Floor in a manner that promotes just and equitable principles of trade and protects investors and the public interest. The proposal is also consistent with section 6(b)(6)[7] of the Act in that it is designed to assure that Exchange members and persons associated with Exchange members are appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the rules of 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.

[4] An example of a situation where an FTC may act as the disciplinary committee is a ''Marking the Close'' trading violation. That is, an incident involves a market maker changing the quotes at the close to not accurately reflect the market to improve the market maker's position. *See* Amendment No. 1, *supra* note 3.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(6).