

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

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

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

Because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>5</sup> and subparagraph (f)(6) of thereunder.<sup>6</sup> 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.<sup>7</sup>

The Commission notes that under Rule 19-4(f)(6)(iii),<sup>8</sup> the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing requirement and designate that the proposed rule change become operative immediately to permit the implementation of this exception to NYSE Rule 123(e) without inconvenience or delay to the public, which the NYSE believe is consistent with investor protection and the public interest. In particular, the Exchange believes the proposed rule change will enable members to execute ETF-related orders quickly without having to immediately enter the order into an electronic system (FESC). The proposed rule change will still require that such orders be entered into an electronic system (FESC) within 90 seconds after the execution of the respective order.

The Commission believes that it is consistent with the protection of

investors and the public interest to waive the five-day pre-filing required and designate the proposal immediately operative.<sup>9</sup> Accelerating the operative date and waiving the pre-filing requirement will permit the Exchange to implement the exception to NYSE Rule 123(e) without undue delay. For this reason, the Commission finds good cause to designate that the proposal become operative immediately.

**IV. Solicitation of Comments**

Interest persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 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-2001-52 and should be submitted by February 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-45249; File No. SR-NYSE-2001-55]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend NYSE Rule 51 Relating to Suspension of Trading**

January 7, 2002.

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> notice is hereby given that on December 31, 2001, 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, II, and III 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.

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

The Exchange proposes to amend NYSE Rule 51, Hours for Business, to make emergency procedures more flexible and more responsive to the Exchange's current organizational structure and to the kinds of challenges that the Exchange may face. The text of the proposed rule change is below. Proposed new language is in italics; deletions are in brackets.

**Rule 51. Hours for Business**

Except as may be otherwise determined by the Board of Directors as to particular days, the Exchange shall be open for the transaction of business on every business day, excluding Saturdays,

(a) for a 9:30 a.m. to 4:00 p.m. trading session, and

(b) for the purposes of "Off-Hours Trading" (as Rule 900 (Off-Hours Trading: Applicability and Definitions) defines that term), during such hours as the Exchange may from time to time specify.

[The Chairman, Vice-Chairman and the Senior Floor Director or in the absence from the Floor of any of them, the next senior Floor Director present on the Floor acting by a majority shall have the power to suspend trading in all securities whenever in their opinion such suspension would be in the public interest. A special meeting of the Board

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

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

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>7</sup> The Commission notes, however, this proposed rule change has been filed as a one-year pilot. During the pilot, the NYSE will surveil the application of the exception to NYSE Rule 123(e) and submit data to the Commission for the purpose of evaluating the Rule's efficacy.

<sup>8</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>9</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

of Directors to consider the continuation or termination of such suspension or closing the market shall be held as soon thereafter as a quorum of Directors can be assembled.]

*Except as may be otherwise determined by the Board of Directors, the Chairman of the Board shall have the power to halt or suspend trading in some or all securities traded on the Exchange, to close some or all Exchange facilities, and to determine the duration of any such halt, suspension or closing, when he deems such action to be necessary or appropriate for the maintenance of a fair and orderly market or the protection of investors, or otherwise in the public interest, due to extraordinary circumstances, such as (1) actual or threatened physical danger, severe climatic conditions, civil unrest, terrorism, acts of war, or loss or interruption of facilities utilized by the Exchange, or (2) a request by a governmental agency or official, or (3) a period of mourning or recognition for a person or event. In considering such action, the Chairman of the Board shall consult with the Vice Chairmen, if available, and such available Floor Directors as he deems appropriate under the circumstances. The Chairman of the Board shall notify the Board of actions taken pursuant to this Rule, except for a period of mourning or recognition for a person or event, as soon thereafter as is feasible.*

\* \* \* \* \*

## 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 NYSE proposed to amend NYSE Rule 51 to make emergency procedures more flexible and more responsive to the Exchange's current organizational structure and to the kinds of challenges that the Exchange may face.

NYSE Rule 51 sets forth the Exchange's trading hours, provides for "off-hours" trading hours and provides procedures for the suspension of trading. (NYSE Rule 80B provides for trading halts due to extraordinary market volatility.)

While NYSE Rule 51 has been modified from time to time, e.g., to adjust trading hours and to change holidays, the procedures for suspension of trading have not been substantially revised since the Exchange's incorporation in 1971 or since the development and implementation of its numerous computerized systems. These procedures are provided in the second paragraph of the Rule

NYSE Rule 51's current procedure to suspend trading requires (1) action by a majority of the Chairman, Vice Chairman and most senior Floor Director available and (2) a meeting of the Board to consider continuation or termination or the suspension or closing the market. The current procedures provide only for suspension of trading of all securities traded on the Exchange.

The existing procedures under NYSE Rule 51 contemplate a Board that is in a position to meet quickly and, perhaps, more often in emergency situations. The Rule does not explicitly permit a suspension of some, but not all, securities, which partial suspension might be the most appropriate response in a future emergency. The current suspension procedures also do not adequately deal with situations involving the kind of unexpected, quick and devastating actions that the nation, and particularly the securities industry, faced on September 11, 2001, and days following. Nor are the current procedures effective in the face of the kind of system outages the Exchange experienced on June 8, 2001.

The NYSE proposes that the Chairman, in consultation with the Vice Chairmen of available and with such available Floor Directors as he deems appropriate under the circumstances, be authorized under amended NYSE Rule 51 to respond to future extraordinary circumstances by halting or suspending trading in some or all securities traded on the Exchange or by closing some or all Exchange facilities, and to determine the duration of any such halt or suspension or closing. The Chairman would be required to notify the Board of actions taken, other than for a period of mourning or recognition for a person or event, as soon as feasible after the actions.

Under the proposed rule change, action would be taken only as a result or extraordinary circumstances and only as the Chairman deems it necessary or

appropriate for the maintenance of a fair and orderly market or the protection of investors or otherwise in the public interest. Examples of possible extraordinary circumstances include action or threatened physical danger, severe climatic conditions, civil unrest, terrorism, and act of war, or loss or interruption of facilities utilized by the Exchange. The Chairman would also be able to take action in the event of a request by a governmental agency or official, and for a period of mourning or recognition of a person or event.

The Board continues to have the power to take action it deems necessary or appropriate in particular situations and special Board meetings can be convened.

#### 2. Statutory Basis

The NYSE believes the proposed rule change is consistent with the requirement under Section 6(b)(5) of the Act<sup>3</sup> that an Exchange have rules that are designed 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 proposed rule change is designed to accomplish these ends by strengthening the Exchange's ability to respond appropriately and in a timely fashion to future extraordinary circumstances.

#### 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 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 Exchange consents, the Commission will:

(A) By order approve such proposed rule change or,

<sup>3</sup> 15 U.S.C. 78f(b)(5).

(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 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 number SR-NYSE-2001-55 and should be submitted by February 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45240; File No. SR-PCX-2001-53]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Ceiling on Marketing Charges

January 7, 2002.

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> notice is hereby given that on December 26, 2001, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which the PCX has prepared. The Commission is

publishing this 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 PCX is proposing to establish a ceiling on marketing charges of \$200 per trade. The text of the proposed rule change is available at the PCX and at the Commission.

#### 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 had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX 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 PCX recently adopted a payment-for-order-flow program under which it charges a marketing fee ranging from \$0 to \$1.00 per contract on a per-issue basis.<sup>3</sup> The PCX charges the marketing fees as set forth in the Schedule of Rates that it periodically files with the Commission.<sup>4</sup>

The PCX is proposing to establish a ceiling of \$200 per trade for the marketing fee. The PCX believes that the proposed rule change is reasonable and equitable because, in its view, capping each trade at \$200 would provide sufficient money for LLMs to maintain the marketing program while lessening the economic burden on Market Makers. By its terms, the proposed ceiling would become effective beginning with the January 2002 trade month.

###### 2. Basis

The PCX believes that the proposal is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and Section 6(b)(4) of the Act,<sup>6</sup> in particular, in that it provides for

<sup>3</sup> See Securities Exchange Act Release 44830 (September 21, 2001), 66 FR 49728 (September 29, 2001) (SR-PCX-2001-37).

<sup>4</sup> See Securities Exchange Act Release No. 45167 (December 18, 2001), 66 FR 67346 (December 28, 2001) (SR-PCX-2001-49).

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

the equitable allocation of reasonable dues, fees, and other charges among its members.

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

The PCX 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 PCX 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

Because the PCX has designated the foregoing as a fee change pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f) thereunder,<sup>8</sup> it has become effective immediately upon filing with the Commission. At any time within 60 days after the filing of this proposed rule change, the Commission may summarily abrogate the 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.

#### 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 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 PCX. All submissions should refer to File No.

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f).

<sup>4</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.