

## V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether the amendment 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 the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2001-46 and should be submitted by May 6, 2002.

## VI. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>20</sup> that the proposed rule change (SR-NASD-2001-46) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45706; File No. SR-NYSE-2002-08]

### Self Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Changes to Audit Trail Account Identification Codes

April 8, 2002.

On January 23, 2002, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("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 to introduce a new identification code/audit trail account type, "Q," to indicate a proprietary trade by a member to cover the member's own error pursuant to Exchange Rule 134.

The proposed rule change was published for comment in the **Federal Register** on February 28, 2002.<sup>3</sup> The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>4</sup> and, in particular, the requirements of section 6 of the Act<sup>5</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>6</sup> which requires, among other things, 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 a national market system and, in general, to protect investors and the public interest. The Commission believes the addition of the identifier "Q" for proprietary trades to cover the member's own error should protect investors by identifying error transactions and enhancing the Exchange's ability to conduct automated surveillance of NYSE members' error trading.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (File No. SR-NYSE-2002-08) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>3</sup> Securities Exchange Act Release No. 45462 (February 20, 2002), 67 FR 9341 (February 28, 2002).

<sup>4</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

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

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45712; File No. SR-PCX-2001-13]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Its Auto-Ex System

April 9, 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 January 30, 2002, 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 Exchange. PCX submitted Amendment No. 1 to the proposed rule change on April 9, 2002.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes rule changes that describe circumstances and Exchange procedures for disengaging the Exchange's Automatic Execution System for Options ("Auto-Ex") and increasing or decreasing Auto-Ex order size. The proposed changes include a procedure for documenting circumstances in which Auto-Ex is disengaged or the eligible order size is increased or decreased. The proposed rule changes also establish circumstances and procedures for declaring away markets unreliable. The

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

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

<sup>3</sup> In Amendment No. 1, the Exchange proposed the following: (1) To add rule text and a purpose statement discussion specifying the circumstances necessary for declaring away markets unreliable and the procedures to be followed in making such declarations; (2) to delete language from the rule text and purpose statement that defines unusual market conditions as including "other situations that create unusual trading conditions;" (3) amend the definition of large influx of orders to include an extraordinarily large options order on the PCX in place of the prior language that referred to an extraordinarily large order on an options exchange; and (4) to delete language from the rule text and purpose statement that describes the underlying quote feed as unreliable when there is no response to orders to buy or sell the underlying stock, or when Market Makers are unable to manually update their quotes. See letter from Cindy Sink, Senior Attorney, Regulatory Policy, PCX, to Deborah L. Flynn, Assistant Director, Division of Market Regulation, Commission, dated April 8, 2002 ("Amendment No. 1").

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</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.