

orders received by the specialist shall be manually displayed, unless they are executed at a better price in a transaction being put together in the auction market at the time that the order is received.

In conjunction with autoquoting of bids and offers, NYSE Rule 1000 ("Automatic Execution of Limit Orders Against Orders Reflected in NYSE Published Quotation") would be amended to provide that a NYSE Direct+® ("NYSE Direct+") order equal to or greater than the size of the published bid/offer will exhaust the entire bid/offer, rather than decrease it to 100 shares as is the case today.<sup>7</sup> The purpose of this change is to facilitate the autoquoting of the next highest bid/lowest offer. The unfilled balance of the NYSE Direct+ order would be displayed in the auction market as a SuperDOT limit order.

The Exchange believes that the proposed automated dissemination of the best bid and offer suggests a need to amend Supplementary Material .30 to NYSE Rule 123A ("Miscellaneous Requirements") to enable specialists to trade percentage orders against incoming SuperDOT orders. Currently, specialists may bid or offer (within \$0.10 of the last sale) on behalf of a percentage order, and an incoming SuperDOT order may then trade against such bid or offer. The specialist may not "reach across the market" to trade a percentage order against a bid or offer in a "destabilizing" transaction (bid above the last sale or sell below the last sale) unless the trade is for at least 10,000 shares or a quantity of stock with a market value of at least \$500,000. With the automating of SuperDOT bids and offers, specialists would not be permitted to interact with such orders on behalf of percentage orders as they do today because they cannot "reach

<sup>7</sup> NYSE Rule 1001(c) currently provides that if executions of auto ex orders have traded with all trading interest reflected in the Exchange's published bid or offer, the Exchange will disseminate a bid or offer at that price of 100 shares until the specialist requotes that market. See Securities Exchange Act Release No. 43767 (December 22, 2000), 66 FR 834 (January 4, 2001) (SR-NYSE-2000-18). The NYSE Direct+ pilot was subsequently extended for an additional year, see Securities Exchange Act Release No. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002) (SR-NYSE-2001-50); and, recently extended until December 23, 2003, see Securities Exchange Act Release No. 46906 (November 25, 2002), 67 FR 72260 (December 4, 2002) (SR-NYSE-2002-47). The Exchange recognizes that the proposed language in NYSE Rule 1000 will have the effect of superseding the provisions of NYSE Rule 1001(c). The Exchange represents that it will submit an amendment to delete Rule 1001(c) before approval of the proposed rule change. The Exchange also represents that, if approved, amended NYSE Rule 1000 will be part of the pilot program for NYSE Direct+ rules.

across the market" to effect smaller size trades. Thus, the Exchange is proposing to amend NYSE Rule 123A.30 to permit specialists to "reach across the market" with percentage orders to effect trades of less than 10,000 shares or a quantity of stock having a market value of less than \$500,000. Specialists could not "reach across the market" more than \$0.10 from the last sale to effect these smaller size trades if the trade would be destabilizing. This \$0.10 limitation is the same as the current limitation on making destabilizing bids or offers against which incoming orders may trade.

## 2. Statutory Basis

The Exchange believes that the statutory basis for this proposed rule change is in Section 6(b)(5) of the Act,<sup>8</sup> which requires 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 Exchange believes that the proposed rule change also supports the principles of Section 11A(a)(1) of the Act,<sup>9</sup> in that it seeks to assure the availability to market participants of information with respect to market interest in securities traded on the Exchange, and thereby promote economically efficient execution of securities transactions.

### 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 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, 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 NW., Washington, DC 20549. 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 Exchange. All submissions should refer to the file number in the caption above and should be submitted by January 23, 2003.

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. 34-47089; File No. SR-NYSE-2002-43]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Arbitration

December 23, 2002.

On September 4, 2002, the New York Stock Exchange, Inc. 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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78k-1(a)(1).

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

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

thereunder,<sup>2</sup> a proposed rule change to: Increase the ceilings for claims eligible for simplified arbitration and arbitration claims between members to be decided by one arbitrator; clarify that both a filing fee and a hearing deposit must be submitted with a claim; increase a pre-hearing conference fee and the maximum adjournment fee; and make certain technical changes to fee schedules.

The proposed rule was published for comment in the **Federal Register** on November 20, 2002.<sup>3</sup> No comments were received on the proposal. In this order, the Commission is approving the proposed rule change.

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, with the requirements of section 6(b)(5).<sup>5</sup>

In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5)<sup>6</sup> of the Act in that it is designed to promote just and equitable principles of trade and is consistent with section 6(b)(4)<sup>7</sup> in that it provides for equitable allocation of reasonable dues, fees, and other charges.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-NYSE-2002-43), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>  
[FR Doc. 02-33123 Filed 12-31-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47088; File No. SR-PCX-2002-78]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to a Six-Month Extension of the Automatic Execution System Incentive Pilot Program

December 24, 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 18, 2002, 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. The proposed rule change has been filed by the PCX as a "non-controversial" rule change under rule 19b-4(f)(6) of the Act.<sup>3</sup> 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 extend the Automatic Execution System ("Auto-Ex") Incentive Pilot Program for six months. The text of the proposed rule change is available at the Office of the Secretary, 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 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

On June 7, 2002, the Commission approved, on a six-month pilot basis, the Exchange's proposal to amend PCX rule 6.87, which governs the operation of Auto-Ex<sup>4</sup> to provide an Auto-Ex Incentive Program for apportioning Auto-Ex trades among Market Makers.<sup>5</sup> The pilot program is currently set to expire on December 24, 2002.<sup>6</sup>

The Auto-Ex Incentive Program allows the Exchange to assign Auto-Ex orders to logged-on Market Makers according to their percentage of their in-person agency<sup>7</sup> contracts traded in an issue (excluding Auto-Ex contracts traded) compared to all of the Market Maker in-person agency contracts traded (excluding Auto-Ex contracts) during the review period. The review period is determined by the Options Floor Trading Committee ("OFTC") and may be for any period of time not in excess of two weeks.<sup>8</sup> The percentage distribution determined for a review period will be effective for the succeeding review period.

The Exchange is requesting an additional extension of the pilot program for six months from December 24, 2002, through June 24, 2003. The added time permits the Exchange to finalize a proposed amendment to its program in order that the participation percentages of Market Makers who are temporarily away from the trading floor may be reinstated in some fashion. Therefore, the Exchange believes that a six-month extension of the program is warranted.

<sup>4</sup> Auto-Ex is the Exchange's Automated Execution system feature of the Pacific Options Exchange Trading System ("POETS") for market or marketable limit orders. POETS is the Exchange's automated trading system comprised of an options order routing system, Auto-Ex, an on-line limit order book system, and an automatic market quote update system. Option orders may be sent to POETS via the Exchange's Member Firm Interface ("MFI"). Market and marketable limit orders sent through the MFI will be executed by Auto-Ex if they meet order type and size requirements of the Exchange.

<sup>5</sup> See Securities Exchange Act Release No. 46115 (June 25, 2002), 67 FR 44494 (July 2, 2002).

<sup>6</sup> The proposed rule changes were, in part, based on CBOE rule 6.8 *Interpretations and Policies* .06(c) "100 Spoke RAES Wheel".

<sup>7</sup> Agency contracts are those contracts that are represented by an agent and do not include contracts traded between Market Makers in person in the trading crowd.

<sup>8</sup> The OFTC has set a two-week review period for all options classes and the OFTC will not vary the term of the review period except for exigent circumstances.

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

<sup>3</sup> See Securities Exchange Act Release No. 34-46824 (November 13, 2002), 67 FR 70098.

<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(b)(5).

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</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> 17 CFR 240.19b-4(f)(6).