

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48769; File No. SR-NYSE-2003-21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. To Increase Its Fingerprint Processing Fee

November 10, 2003.

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 22, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to 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 NYSE. The Exchange amended its proposal on August 29, 2003.³ 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 to amend its 2003 Price List to increase its fingerprinting processing fee.⁴ Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*; proposed deleted text is [bracketed].

* * * * *

NYSE 2003 PRICE LIST— REGULATORY FEES

| | | |
|---------------------------|------|-----------------|
| Fingerprint Processing .. | —new | \$35.00 [25.50] |
|---------------------------|------|-----------------|

* * * * *

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, as amended. 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 proposes to amend its 2003 Price List to increase its fingerprint processing fee. Rule 17f-2 of the Act⁵ requires the fingerprinting of, among others, every partner, director, officer, and certain specified employees of a national securities exchange member, broker, and dealer. Further, such fingerprints must be submitted to the U.S. Attorney General's Office or its designee for processing and review.

Pursuant to a plan filed with and approved by the Commission in accordance with paragraph (c) of Rule 17f-2⁶ ("Plan"), the Exchange acts as a processor of fingerprints whereby it forwards fingerprint cards (and attendant payments) to the Federal Bureau of Investigation ("FBI").

The Exchange performs this service for non-registered employees of members, member organizations, and a limited number of others⁷ pursuant to Rule 17f-2⁸ (e.g., transfer agents). Further, the Exchange processes some fingerprint checks on behalf of both prospective NYSE members not associated with a member organization and current members seeking to change firms. In any instance where the Exchange provides FBI fingerprint processing services to a registered

⁵ 17 CFR 240.17f-2.

⁶ 17 CFR 240.17f-2(c).

⁷ The NYSE has represented that it has contacted the affected group of non-members and that none of the contacted non-members has objected.

According to the NYSE, the number of interested persons that are not associated with a member or member organization is a very small percentage of the total number of persons who utilize the Exchange's fingerprint processing service. Teleconference between Mary Anne Furlong, Director, Rule and Interpretive Standards, NYSE, and Christopher B. Stone, Special Counsel, Division, Commission (September 23, 2003).

⁸ 17 CFR 240.17f-2.

person, the results are forwarded to the National Association of Securities Dealers, Inc. ("NASD") by the member or member organization for posting to the registered person's central registration depository record.

The current total fee charged by the Exchange per fingerprint card is \$25.50, which amount consists of a \$24.00 processing fee charged by the FBI (of which \$2.00 is returned to the NYSE) and a \$1.50 processing fee charged by the Exchange. The Exchange is proposing to raise the processing fee to \$11.00, an increase of \$9.50. This increase would bring the total processing fee per card to \$35.00. The most recent fee increase occurred in January of 1994 when the FBI raised its processing fee from \$23.00 to \$24.00. The fee of \$1.50 charged by the Exchange has not increased since the Plan's inception in 1976.

The proposed fee increase is directly related to costs incurred from the Exchange's transition from a manual to an electronic method of submitting fingerprint cards to the FBI.⁹ This transition has resulted in a significant improvement in client service. Upgrades to the Exchange system have reduced processing time per card from an average of three weeks to a current turnaround time of 24 to 48 hours.

In addition to recouping consulting and programming expenses incurred during the system upgrade, the increase would offset the cost of maintaining the service. The Exchange also believes that the increase would bring the Exchange's processing fee more in line with similar services provided by NASD.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act¹¹ because the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange believes that the proposed rule change is also consistent with Section 6(b)(5)¹² of the Exchange Act in that it enables the Exchange to recover its costs with respect to fingerprint card processing.

⁹ The NYSE has represented that it intends to amend its Plan to reflect this change.

Teleconference between Mary Anne Furlong, Director, Rule and Interpretive Standards, NYSE, and Ronesha A. Butler, Attorney, Division, Commission (November 10, 2003).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78f(b)(5).

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Darla C. Stuckey, Corporate Secretary, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 28, 2003, replacing NYSE's original Form 19b-4 filing in its entirety ("Amendment No. 1"). In Amendment No. 1, the NYSE converted the proposed rule change from a filing made pursuant to Section 19(b)(3)(A) to a Section 19(b)(2) filing.

⁴ See 17 CFR 240.17f-2.

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

The NYSE believes that the proposed rule change, as amended, will not 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

Written comments on the proposed rule change, as amended, were neither solicited nor received.

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 such 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 20549-0609. 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 SR-NYSE-2003-21 and should be submitted by December 10, 2003.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48767; File No. SR-PCX-2003-48]

Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Establishment of a New Total Imbalance Indicator on the Archipelago Exchange

November 10, 2003.

I. Introduction

On September 22, 2003, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its rules governing the Archipelago Exchange facility ("ArcaEx"), the equities trading facility of PCX's wholly-owned subsidiary, PCX Equities, Inc. ("PCXE"), in order to add a new Total Imbalance indicator to its Market Order Auction and Trading Halt auction display. On September 30, 2003, the PCX submitted Amendment No. 1 to the proposed rule change.³ Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on October 16, 2003.⁴ The Commission received no comments in response to the proposal. This order approves the PCX's proposed rule change on an accelerated basis.

II. Description

PCX proposes to amend PCXE Rule 1.1(q) and PCXE Rule 7.35(c) and (d) to add a new order imbalance indicator to the information that is displayed during

the ArcaEx Market Order Auction⁵ and during the Trading Halt Auction.⁶ The new Total Imbalance Indicator would display the total net imbalance of market and limit orders at the "Indicative Match Price."⁷ This imbalance indicator will be in addition to the existing market order Imbalance indicator that exclusively displays the imbalance of unmatched market orders.

Currently, PCXE Rule 1.1(q) defines the term "Imbalance" as the number of buy or sell shares that cannot be matched with other shares at the Indicative Match Price at any given time. The PCX proposes to amend PCXE Rule 1.1(q) to define two types of order imbalances, Total Imbalance and Market Imbalance. "Total Imbalance" would be defined as the net imbalance of buy (sell) orders at the Indicative Match Price for all orders that are eligible for execution during the Market Order Auction or the Trading Halt Auction. "Market Imbalance" would mean only the imbalance of any buy (sell) Market Orders that are not matched for execution during the applicable auction.

The PCXE's current rules governing the publication of imbalances associated with its Market Order Auction and Trading Halt Auction are set forth in PCXE Rule 7.35. During the Market Order Auction and the Trading Halt Auction, the PCX currently publishes only the unmatched portion of market orders (and not limit orders) as the Imbalance display. The PCX proposes to amend PCXE Rules 7.35(c) and 7.35(d) to establish an indicator that would display the Total Imbalance in addition to the Market Imbalance during the Market Order Auction and Trading Halt Auction.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with Section 6(b) of the Act⁸ in general and furthers the objectives of Section 6(b)(5) of the Act.⁹ The Commission believes that the proposal is designed to promote just and equitable principles of trade, to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market.¹⁰

The Commission believes that the dissemination of the aforementioned imbalance Indicators will provide ETP

⁵ See PCXE Rule 7.35(c).

⁶ See PCXE Rule 7.35(d).

⁷ See PCXE Rule 1.1(r).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ In approving this rule, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Peter D. Bloom, Managing Director, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 29, 2003 ("Amendment No. 1"). In Amendment No. 1, the PCX submitted a new Form 19b-4, which replaced the original filing in its entirety.

⁴ See Securities Exchange Act Release No. 48603 (October 8, 2003), 68 FR 59661 (SR-PCX-2003-48). The 21-day comment period expired on November 6, 2003.