disseminate. Before a CHX specialist can respond to a ''trade or move'' request in an informed fashion, he must be fully apprised of his updated position, based on the comprehensive data of all preopening orders that he has received. The Exchange believes that an 8:20 (CT) deadline for CHX preopening orders would better enable CHX specialists to comply with SuperMontage rules and procedures governing the vital ''trade or move'' functionality.

Accordingly, the Exchange believes that the modification requested by the OTC Subcommittee is appropriate. Because the Exchange believes that the current single price opening guarantee was enacted voluntarily as a means of attracting customer order flow and is not required under the Act or any other legislative mandate, the Exchange believes that it is appropriate for OTC specialists to modify slightly the parameters under which this guarantee is available.

2. Statutory Basis

The CHX believes the proposal, as amended, is consistent with the requirements of Section 6(b)[7] of the Act in general, and Section 6(b)(5) of the Act[8] in particular, because it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

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

No written comments were either solicited or 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 Exchange 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.

The CHX has requested accelerated approval of the proposed rule change, as amended. While the Commission will not grant accelerated approval at this time, the Commission will consider granting accelerated approval of the proposal, as amended, at the close of an abbreviated comment period of 15 days from the date of publication of the proposal in the **Federal Register**.

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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 CHX. All submissions should refer to File No. SR–CHX–2003–23 and should be submitted by December 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30352 Filed 12–5–03; 8:45 am]

BILLING CODE 8010–01–P

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

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48860; File No. SR–CHX–2003–19]

Self-Regulatory Organizations; Order Granting Partial Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating to Governance of Issuers on the CHX

December 1, 2003.

I. Introduction

On July 28, 2003, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend certain provisions of its rules relating to the governance of issuers that list securities on the CHX.

The proposed rule change, among other things, would require each issuer listed on the CHX to establish an independent audit committee and to comply with the standards for audit committees mandated by Section 10A(m) of the Act[3] and Rule 10A–3 thereunder.[4] The proposal also would amend the CHX's Tier I and Tier II listing standards to enhance its requirements relating to the roles and responsibilities of independent directors and independent board committees, including audit committees, nominating committees and compensation committees. The proposal further includes amendments to the CHX's maintenance standards to set out a process that would allow an issuer an opportunity to cure a failure to meet the Exchange's maintenance listing standards, including its governance-related standards.

On October 28, 2003, the Commission published the proposed rule change for comment in the **Federal Register**.[5] The Commission received no comments on the proposal. On November 24, 2003, the Exchange filed Amendment No. 1 to the proposal.[6]

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78j–1(m).

[4] 17 CFR 240.10A–3.

[5] *See* Securities Exchange Act Release No. 48669 (October 21, 2003), 68 FR 61500 (October 28, 2003).

[6] *See* letter from Ellen J. Neely, Senior Vice President and General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 21, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange requested that the Commission grant approval at this time to: (a) the sections that relate

Rule 10A–3 requires each national securities exchange and national securities association to have rules that comply with its requirements approved by the Commission no later than December 1, 2003. This Order approves the proposed rule change in part as set forth below, so that the CHX can comply with this deadline. This Order also provides notice of Amendment No. 1 and approves Amendment No. 1 on an accelerated basis. The Commission notes that the CHX is considering revisions to the portions of the proposed rule change that pertain to corporate governance standards other than the revisions to comply with Rule 10A–3 requirements, particularly in light of rule changes by the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. that were recently approved by the Commission.[7] This Order does not relate to those other proposed provisions except to the extent indicated below.

II. Description of the Approved Changes

The Commission is approving in this Order the portions of the proposed rule change that: (a) Implement Rule 10A–3; and (b) amend CHX's maintenance standards as set forth in the rule text that follows.[8] The Commission also is approving an additional provision, included in the text set forth below, relating to complaint procedures of audit committees of investment companies. Rule 10A–3 requires audit committees to establish procedures for ''the confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters.'' [9] The additional provision will require that audit committees of investment companies also establish procedures for the confidential, anonymous submission of such concerns by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.

The following is the proposed rule text that the Commission is approving, as set forth by CHX in Amendment No. 1. Proposed new language is in *italics*; proposed deletions are in brackets.

Chicago Stock Exchange Rules

ARTICLE XXVIII

Listed Securities

* * * * *

* * * * *

Maintenance Standards Applicable to All Tier I Issues

RULE 17A. The Exchange reserves the right to delist the securities of any corporation, subject to Securities and Exchange Commission Rules, which engages in practices not in the public interest or whose assets have been depleted to the extent that the company can no longer operate as a going concern or whose securities have become so closely held that it is no longer feasible to maintain a reasonable market in the issue. Furthermore, the Exchange reserves the right to delist the securities of any corporation which has drastically changed its corporate structure and/or its type of operation. The Exchange may also make an appraisal of, and determine on an individual basis, the suitability for continued listing of an issue in the light of all pertinent facts whenever it deems such action appropriate, even though a security meets enumerated criteria (including, but not limited to, continued listing on the NYSE, Amex or Nasdaq National Market). Many factors may be considered in this connection, including, but not limited to, abnormally low selling price or volume of trading*, or failure to comply with required corporate governance standards.*

** * * Interpretations and Policies*

If the Exchange identifies a Tier I issue as being below the Exchange's maintenance listing requirements, the Exchange will notify the issuer by letter of its determination and the reasons for that determination. In this letter, the Exchange will provide the issuer with an opportunity to provide the Exchange with a plan (the ''Plan'') to cure the deficiency. Within 10 business days of the receipt of the Exchange's letter, the issuer must contact the Exchange to confirm its receipt of the letter and to report to the Exchange whether or not the issuer intends to present a Plan. If the issuer notifies the Exchange that it does not intend to present a Plan, the Exchange will commence proceedings to suspend and/or delist the issue.

The issuer must present any Plan within 45 days after its receipt of the Exchange's letter. The Plan must describe definitive action that the issuer has taken, or is taking, that would bring it into conformity with the Exchange's maintenance listing requirements within 18 months of receipt of the letter, or within any shorter time period required by the Exchange. (The Exchange will not approve any Plan, under which an issuer is curing a deficiency under SEC Rule 10A–3, which extends beyond the earlier of 12 months or the first annual shareholders' meeting (for circumstances beyond the reasonable control of an issuer) and 6 months (for other circumstances)). The Plan also must set quarterly milestones against which the Exchange will evaluate its progress. Exchange staff will evaluate the Plan and determine whether the issuer has made a reasonable demonstration in the Plan of an ability to come into compliance with the Exchange's maintenance listing requirements. The Exchange will notify the issuer of its determination within 45 days after receipt of the Plan. If the Exchange does not accept the Plan, it will commence proceedings to suspend and/or delist the issue.

If the Exchange accepts the Plan, the Exchange will review the issuer on a quarterly basis to determine the issuer's progress under the Plan. If the issuer fails to meet a material provision of the Plan or one or more of its quarterly milestones, the Exchange will review the facts and circumstances and determine whether to initiate proceedings to suspend and/or delist the issue; provided however, that if an issuer fails to meet a material provision of the Plan that relates to compliance with its obligations under SEC Rule 10A–3, the Exchange will immediately commence proceedings to suspend and/or delist the issue. If, for circumstances that do not involve compliance with SEC Rule 10A–3, the Exchange determines that continued listing is warranted, the Exchange will continue to review the issuer's progress under the Plan on at

---

to the Commission's Rule 10A–3 requirements for listed company audit committees; and (b) the sections that set out a process that would provide an issuer with a specific opportunity to cure any failure to meet the Exchange's maintenance standards, including its governance-related standards. In addition, the Exchange proposed in Amendment No. 1 an additional section of rule text in CHX Rule 19(b)(2) to expand, with respect to investment companies, the scope of the requirement that audit committees establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters. In the amendment, CHX set forth the text of the proposed rule change for which it is seeking approval at this time, which is set forth in Section II. below.

[7] *See* Securities Exchange Act Release Nos. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approval of, among other proposals, File Nos. SR–NYSE–2002–33 and SR–NASD–2002–141) (''NYSE/NASD Corporate Governance Release''). Telephone call between Ellen Neely, Senior Vice President and General Counsel, CHX and Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, and other Commission staff, on November 18, 2003.

[8] The text set forth below also includes several minor changes to the text set forth in the Notice to reflect the fact that the Commission is approving portions of the proposed rule amendments.

[9] 17 CFR 240.10A–3(b)(3)(ii).

least a quarterly basis. If the issuer achieves compliance with the Exchange's maintenance listing requirements before the Plan expires under its terms, the Exchange may choose to consider the Plan ended as of that earlier date.

If an issuer, within one year after the termination of a Plan, is again determined to have failed to meet the Exchange's maintenance listing requirements, the Exchange will review the facts and circumstances (including whether the issuer has fallen into non-compliance with the same standards at issue in its earlier Plan) and will take appropriate action, which could include, but is not limited to, shortening the time periods associated with the submission of any new Plan or immediately commencing proceedings to suspend and/or delist the issue.

These procedures do not prevent the Exchange from suspending trading in an issue immediately, whenever it finds that it is necessary to do so for the protection of investors.

* * * * *

Tier I Corporate Governance and Disclosure Standards Corporate Governance

RULE 19. The following Rule 19 applies [only] to Tier I issuers:

(a) Board of Directors.

Each listed company shall maintain a minimum of two independent directors on its board of directors. For purposes of this section, ''independent director'' shall mean a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

(b) Audit Committee.

(1) Audit Committee Composition. Each listed company shall establish and maintain an Audit Committee, a majority of the members of which shall be independent directors, as defined in section (a) above. *In addition to these criteria:*

(A) Each member of the audit committee must meet the criteria for independence set forth in SEC Rule 10A–3 (subject to the exemptions provided in that Rule);

(B) Exceptions.

If a member of an audit committee ceases to meet the independence criteria set forth in SEC Rule 10A–3 for reasons outside the person's reasonable control, that person may remain a member of the committee until the earlier of the next annual shareholders' meeting or one year from the occurrence of the event that caused the member to no longer meet the independence criteria. The issuer must promptly notify the Exchange if this circumstance occurs.

(2) Audit Committee Responsibilities and Authority. The audit committee must have, at a minimum, (A) the responsibilities and authority set forth in SEC Rule 10A–3; and (B) the obligation to conduct an appropriate review of all related party transactions on an ongoing basis and to review potential conflict of interest situations where appropriate. Audit committees for investment companies must also establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.

(3) Any issuer that is exempt from the provisions of SEC Rule 10A–3 is not required to meet the requirements set out in sections (b)(1)(A) or (b)(2)(A) above and is not required to meet the additional requirements for audit committees for investment companies set out in the last sentence of section (b)(2).

(c) Reserved.

(d) Reserved.

(e) Reserved.

(f) Governance-Related Certifications.

Each issuer's chief executive officer must promptly notify the Exchange after any executive officer of the issuer becomes aware of any material non-compliance by the issuer with applicable standards set out in paragraph (b) of this rule; provided, however, that any issuer that is exempt from the provisions of SEC Rule 10A–3 is not required to meet the requirements of this section (f).

[(a)]*(g) Annual Reports.* No change to text.

[(b)]*(h) Quarterly Reports.* No change to text.

[(c)]*(i) Other Reports.* No change to text.

[(d) Each listed company shall establish and maintain an Audit Committee, a majority of the members of which shall be independent directors, as defined below.]

[(e) Each listed company shall maintain a minimum of two independent directors on its board of directors. For purposes of this section, ''independent director'' shall mean a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.]

[(f)]*(j) Annual Meeting.* No change to text.

[(g)]*(k) Proxy Solicitations.* No change to text.

[(h) Each issuer shall conduct an appropriate review of all related party transactions on an ongoing basis and shall use the company's audit committee or a comparable body for the review of potential conflict of interest situations where appropriate.]

[(i)]*(l) Stock Certificates.* No change to text.

[(j)]*(m)* No change to text.

[(k)]*(n) Stock Transfer Facilities.* No change to text.

(o) Reserved.

. . . Interpretations and Policies

.01 No change to text.

.02 Reserved.

.03 Reserved.

.04 Reserved.

.05 Transition Periods and Compliance Dates. Sections (a)–(f) will become effective pursuant to the following schedule:

The audit committee requirements mandated by SEC Rule 10A–3 (and the exception set out in section (b)(1)(B) in this rule) will become effective as set out in Rule 10A–3.

* * * * *

Tier II Corporate Governance, Disclosure, and Miscellaneous Requirements

RULE 21. The following Rule 21 applies only to Tier II issuers:

(a) Each issuer shall comply with the governance requirements set out in Rule 19 (a)–(f) of this Article and is subject to Interpretations .02–.05 of that rule.

(b) No change to text.

[(1) Each listed company shall establish and maintain an Audit Committee, a majority of the members of which shall be independent directors.]

[(2) Each listed company shall maintain a minimum of two independent directors on its board of directors. For purposes of this section, ''independent director'' shall mean a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.]

([d]*c) Stock Certificates.* No change to text.

([e]*d) Changes to Listing Standards.* No change to text.

* * * * *

Tier II Maintenance Standards

RULE 22. (a) The Exchange reserves the right to delist the securities of any corporation, subject to Securities and Exchange Commission Rules, which engages in practices not in the public interest or whose assets have been depleted to the extent that the company can no longer operate as a going concern or whose securities have become so closely held that it is no longer feasible to maintain a reasonable market in the issue. Furthermore, the Exchange reserves the right to delist the securities of any corporation which has drastically changed its corporate structure and/or its type of operation. The Exchange may also make an appraisal of, and determine on an individual basis, the suitability for continued listing of an issue in the light of all pertinent facts whenever it deems such action appropriate, even though a security meets enumerated criteria (including, but not limited to, continued listing on the NYSE, Amex or Nasdaq National Market). Many factors may be considered in this connection, including, but not limited to, abnormally low selling price or volume of trading, *or failure to comply with required corporate governance standards.*

(b)–(d)No change to text.

. . . Interpretations and Policies

If the Exchange identifies a Tier II issue as being below the Exchange's maintenance listing requirements, the Exchange will notify the issuer by letter of its determination and the reasons for that determination. In this letter, the Exchange will provide the issuer with an opportunity to provide the Exchange with a plan (the ''Plan'') to cure the deficiency. Within 10 business days of the receipt of the Exchange's letter, the issuer must contact the Exchange to confirm its receipt of the letter and to report to the Exchange whether or not the issuer intends to present a Plan. If the issuer notifies the Exchange that it does not intend to present a Plan, the Exchange will commence proceedings to suspend and/or delist the issue.

The issuer must present any Plan within 45 days after its receipt of the Exchange's letter. The Plan must describe definitive action that the issuer has taken, or is taking, that would bring it into conformity with the Exchange's maintenance listing requirements within 18 months of receipt of the letter, or within any shorter time period required by the Exchange. (The Exchange will not approve any Plan, under which an issuer is curing a deficiency under SEC Rule 10A–3, which extends beyond the earlier of 12 months or the first annual shareholders' meeting (for circumstances beyond the reasonable control of an issuer) and 6 months (for other circumstances)). The Plan also must set quarterly milestones against which the Exchange will evaluate its progress. Exchange staff will evaluate the Plan and determine whether the issuer has made a reasonable demonstration in the Plan of an ability to come into compliance with the Exchange's maintenance listing requirements. The Exchange will notify the issuer of its determination within 45 days after receipt of the Plan. If the Exchange does not accept the Plan, it will commence proceedings to suspend and/or delist the issue.

If the Exchange accepts the Plan, the Exchange will review the issuer on a quarterly basis to determine the issuer's progress under the Plan. If the issuer fails to meet a material provision of the Plan or one or more of its quarterly milestones, the Exchange will review the facts and circumstances and determine whether to initiate proceedings to suspend and/or delist the issue; provided however, that if an issuer fails to meet a material provision of the Plan that relates to compliance with its obligations under SEC Rule 10A–3, the Exchange will immediately commence proceedings to suspend and/or delist the issue. If, for circumstances that do not involve compliance with SEC Rule 10A–3, the Exchange determines that continued listing is warranted, the Exchange will continue to review the issuer's progress under the Plan on at least a quarterly basis. If the issuer achieves compliance with the Exchange's maintenance listing requirements before the Plan expires under its terms, the Exchange may choose to consider the Plan ended as of that earlier date.

If an issuer, within one year after the termination of a Plan, is again determined to have failed to meet the Exchange's maintenance listing requirements, the Exchange will review the facts and circumstances (including whether the issuer has fallen into non-compliance with the same standards at issue in its earlier Plan) and will take appropriate action, which could include, but is not limited to, shortening the time periods associated with the submission of any new Plan or immediately commencing proceedings to suspend and/or delist the issue.

These procedures do not prevent the Exchange from suspending trading in an issue immediately, whenever it finds that it is necessary to do so for the protection of investors.

* * * * *

III. Discussion

After careful review, the Commission finds that the provisions of the proposed rule change which are amended by Amendment No. 1 and are set forth in Section II. above, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] Specifically, the Commission finds that the proposal to require independent audit committees for listed companies is consistent with Section 6(b)(5) of the Act,[11] which requires, among other things, that the CHX's rules be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. Moreover, the Commission believes that the Exchange's proposal to add the new requirements concerning audit committees is appropriate and consonant with Section 10A(m) of the Act and Rule 10A–3 thereunder relating to audit committee standards for listed issuers.

Furthermore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[12] to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 contains a provision that responds to a recommendation by the Commission that self-regulatory organizations take into account, in adopting their rules, the fact that most services are rendered to an investment company by employees of third parties, such as the investment adviser, rather than by employees of the investment company.[13] In Amendment No. 1, the Exchange also made several non-substantive changes to the rule text to reflect the fact that the Commission is approving portions of the proposed amendments. The Commission believes that it is appropriate to accelerate approval of this amendment because it conforms the rule text to similar provisions approved by the Commission

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

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] *See* Securities Act Release No. 8220, Securities Exchange Act Release No. 47654, and Investment Company Act Release No. 26001 (April 9, 2003), 68 FR 18788 (April 16, 2003) (release adopting Rule 10A–3).

for other self-regulatory organizations,[14] and raises no new issues.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–2003–19 and should be submitted by December 29, 2003.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the portions of the proposed rule change (File No. SR–CHX–2003–19) set forth above relating to compliance with Rule 10A–3 under the Act, maintenance standards, and audit committee responsibilities and authority, be, and hereby are, approved, and that Amendment No. 1 be granted accelerated approval.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30355 Filed 12–5–03; 8:45 am]

BILLING CODE 8010–01–P

[14] *See* NYSE/NASD Corporate Governance Release, *supra* n. 7.

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

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48857; File No. SR–NYSE–2002–40]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the New York Stock Exchange, Inc. (''NYSE'') To Establish Two New Crossing Sessions in the Exchange's Off-Hours Trading Facility

December 1, 2003.

On August 29, 2002, the New York Stock Exchange, Inc. (''NYSE'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] a proposed rule change to introduce into its rules ''Crossing Session III'' for the execution of guaranteed price coupled orders by member organizations to fill the balance of customer orders at a price that was guaranteed to a customer prior to the close of the Exchange's 9:30 a.m. to 4 p.m. trading session. On August 14, 2003, the NYSE filed Amendment No. 1 to the proposed rule change.[3] On October 8, 2003, the NYSE filed Amendment No. 2 to the proposed rule change.[4] Amendment No. 1 would adopt a new Rule 907 to add a ''Crossing Session IV'' whereby an unfilled balance of an order may be filled at a price such that the entire order is filled at no worse price than the Volume Weighted Average Price (''VWAP'') for the subject security. Proposed Crossing Session III and Crossing Session IV would operate as a one-year pilot. The proposed rule change and Amendment Nos. 1 and 2 thereto were published for notice and comment in the **Federal Register** on October 28, 2003.[5] The Commission received no comments on 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[6] and, in particular, the requirements of Section 6(b)(5) of the Act[7] and the rules and regulations thereunder requiring 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 that the proposed new crossing sessions may improve the transparency of these types of transactions which are currently often effected in non-U.S. markets without reporting. In approving Crossing Session I and Crossing Session II, the Commission granted exemptive relief from Rule 10a-1 under the Act[8] (short sale rule) for transactions effected therein; this exemptive relief is not being extended to transactions effected in Crossing Session III and Crossing Session IV.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NYSE–2002–40), be, and hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30356 Filed 12–5–03; 8:45 am]

BILLING CODE 8010–01–P

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

[2] 17 CFR 240.19b-4.

[3] *See* letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, SEC, dated August 13, 2003, and enclosure (''Amendment No. 1''). Amendment No. 1 proposes to add ''Crossing Session IV.''

[4] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, SEC, dated October 7, 2003, and enclosure (''Amendment No. 2''). Amendment No. 2 deletes the reference to a volume-weighted average price (''VWAP'') order from paragraph (c) of proposed Rule 907.

[5] Securities Exchange Act Release No. 48659 (October 20, 2003), 68 FR 61532.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 240.10a-1.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48861; File No. SR–PCX–2003–35]

Self-Regulatory Organizations; Order Granting Partial Approval of a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Thereto by the Pacific Exchange, Inc., To Amend Its Corporate Governance and Disclosure Policies

December 1, 2003.

I. Introduction

On July 14, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly owned subsidiary, PCX Equities, Inc. (''PCXE''), filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities