

2003-163 and should be submitted on or before June 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49682; File No. SR-NYSE-2004-09]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the New York Stock Exchange, Inc., and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 To Amend NYSE Rule 123C Relating to Market-on-Close Policy and Expiration Procedures

May 11, 2004.

#### I. Introduction

On February 19, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 amend NYSE Rule 123C relating to Market-on-Close Policy and Expiration Procedures. The proposed rule change was published for comment in the **Federal Register** on April 1, 2004.<sup>3</sup> The Commission received no comments on the proposal.

On April 26, 2004, the Exchange amended the proposed rule change.<sup>4</sup> Amendment No. 1 adds "LOC" to the first sentence of section (3)(B) of NYSE Rule 123C, which was inadvertently

excluded from the rule text of the Exchange's original filing.

This order approves the proposed rule change. Simultaneously, the Commission provides notice of filing of Amendment No. 1 and grants accelerated approval of Amendment No. 1.

#### II. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and 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 and, in particular, the requirements of Section 6(b) of the Act.<sup>5</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>6</sup> in that it is designed to, among other things, prevent fraudulent and manipulative acts and practices, 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 electronic entry of all market-on-close ("MOC") and limit-on-close ("LOC") orders may allow market participants greater control in active trading crowds, and may enhance the dissemination of accurate information to all participants, because publications will be systematically generated. Furthermore, the Commission believes that moving the MOC and LOC deadline from 3:40 p.m. to 3:50 p.m. may allow traders and floor brokers greater control over the execution of customer orders and greater participation in active markets. The Exchange stated that its electronic entry systems for MOC and LOC order processing would require technology upgrades. Accordingly, the Exchange has represented that it will notify the Exchange membership and the Commission of the timing and implementation of such electronic entry systems.

For these reasons, the Commission finds that the proposed rule change is consistent with the Act.<sup>7</sup>

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1

added "LOC" to the first sentence of section (3)(B) of NYSE Rule 123C. Since Amendment No. 1 makes only a technical change to the proposed rule text, the Commission finds good cause to accelerate approval of Amendment No. 1 to the proposed rule change.<sup>8</sup>

#### III. 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. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2004-09 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NYSE-2004-09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2004-09 and should be submitted on or before June 9, 2004.

<sup>8</sup> See footnote 4, *supra*.

<sup>7</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> See Securities Exchange Act Release No. 49476 (March 25, 2004), 69 FR 17255.

<sup>4</sup> See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 26, 2004 ("Amendment No. 1"). In Amendment No. 1, the NYSE corrected a typographical error. Additionally, the NYSE confirmed that by making this correction to paragraph (3)(B) of the proposed rule language, the NYSE clarifies what is established NYSE practice where there is no order imbalance. Amendment No. 1 does not expand the scope of the proposed rule change, but instead only clarifies rule language that represents existing practices at the NYSE. See, telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, and Joseph P. Morra, Special Counsel, Division, Commission, dated May 10, 2004.

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

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

<sup>7</sup> 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).

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-NYSE-2004-09) be, and it hereby is, approved, and that Amendment No. 1 to the proposed rule change be, and hereby is, approved on an accelerated basis.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49681; File No. SR-PCX-2003-51]

#### Self-Regulatory Organizations; Notice of Filing and Amendments No. 1, 2, and 3 Thereto of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Conditions of PCX Membership

May 11, 2004.

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 October 29, 2003, 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 self-regulatory organization. On December 18, 2003, the Exchange filed Amendment No. 1.<sup>3</sup> On March 15, 2004, the Exchange filed Amendment No. 2.<sup>4</sup> On April 23, 2004, the Exchange filed Amendment No. 3.<sup>5</sup> The Commission is publishing this notice to solicit comments, as amended,

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 proposes to amend its rules regarding the Exchange’s conditions to membership. Specifically the Exchange proposes to (1) modify rules relating to PCX administered examinations for Floor Brokers and Market Makers; and (2) adopt a rule permitting waiver of the examination requirements by the Membership Committee. The text of the proposed rule change appears below. New text is italicized, and deleted text is in brackets.

#### Rules of the Board of Governors of the Pacific Exchange, Inc.

##### Rule 1 Memberships

##### Denial of and Conditions to Membership

Rule 1.7(b) (1-8)—No change. (9) does not successfully complete [such written proficiency] examinations as required by the Exchange to [enable it to examine and] verify the applicant’s qualifications to function in [one or more of the] capacities covered by the application [applied for];

##### Series 7 Requirement for Off-Floor Traders

(A) All [T] traders of member organizations for which the Exchange is the Designated Examining Authority (“DEA”) must successfully complete the General Securities Registered Representative Examination Test, Series 7, [if the primary business of the member organization involves the trading of securities that is unrelated to the performance of the functions of a registered specialist, a registered market maker or a registered floor broker. The following are exempt from the requirement to successfully complete the Series 7 Examination: Exchange members who] *except for individuals who are performing the function of a [registered specialist,] registered market maker [pursuant to Rule 6.33], [or] registered floor broker [pursuant to Rule[s] 5.27(a), 6.33 or] 6.44[*, respectively]) and associated persons of member firms who facilitate the execution of stock transactions for the accounts of options market makers.

For purposes of this Rule:

(i) The term “trader” means a person who is directly or indirectly compensated by an Exchange member organization and who trades, makes trading decisions with respect to, or otherwise engages in the proprietary or agency trading of securities.]; and

(ii) The term “primary business” means greater than 50% of the member organization’s business.

(B) Each member organization for which the Exchange is the DEA must complete, on an annual basis, and on a form prescribed by the Exchange, a written attestation as to whether the member organization’s primary business is conducted in the performance of the function of a registered specialist, a registered market maker or a registered floor broker (pursuant to Rules 5.27(a), 6.33 or 6.44, respectively).

(C) The requirement to complete the Series 7 Examination will apply to current Traders of member organizations that meet the criteria of subsection (A), above, as well as to future Traders of member organizations that meet the criteria of subsection (A), above, at a later date. Traders of member organizations that meet the criteria of subsection (A), above, at the time of SEC approval of this Rule, must successfully complete the Series 7 Examination within six months of notification by the Exchange.]

Rule 1.7(b)(10-12)—No change.

*Rule 1.7(c)*

*Prior to admission to the trading floor or participation on any trading system, all applicants are required to complete an Exchange Orientation Program. The Membership Committee may waive [or modify] a required examination [for any applicant if,] under the following conditions:*

(1) [within two years of the date such applicant applied to the Exchange for membership, such] *an applicant for registration as a Market Maker pursuant to Rule 6.33 [has] must have successfully completed the Series 44 Examination within five years of the application date for Exchange membership and the applicant must have been a member of the Exchange within six months of the application date for Exchange membership. [a comparable examination administered by a self-regulatory organization or the Securities and Exchange Commission.]*

(2) *an applicant for registration as a Floor Broker pursuant to Rule 6.44 must have successfully completed the Series 45 Examination within five years of the application date for Exchange membership and the applicant must have been a member of the Exchange within six months of the application date for Exchange membership.*

(3) *an applicant for Exchange membership must have successfully completed an equivalent examination administered by a self-regulatory organization within five years of the application date for Exchange membership and the applicant must*

<sup>9</sup> 15 U.S.C. 78s(b)(2).

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

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

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

<sup>3</sup> See Letter from Steven B. Maitlin, Regulatory Policy, Pacific Exchange, Inc., to Nancy Sanow, Assistant Director, Division of Market Regulation (“Division”), Commission, dated December 17, 2003 (“Amendment No. 1”). Amendment No. 1 replaced the originally filed proposal in its entirety.

<sup>4</sup> See Letter from Steven B. Maitlin, Regulatory Policy, Pacific Exchange, Inc., to Nancy Sanow, Assistant Director, Division, Commission, dated March 12, 2004 (“Amendment No. 2”). Amendment No. 2 replaced Amendment No. 1 in its entirety.

<sup>5</sup> See Letter from Steven B. Maitlin, Regulatory Policy, Pacific Exchange, Inc., to Nancy Sanow, Assistant Director, Division, Commission, dated April 22, 2004 (“Amendment No. 3”). Amendment No. 3 replaced Amendment No. 2 in its entirety.